THE

CODE OF ALABAMA,

ADOPTED BY ACT OF THE GENERAL ASSEMBLY OF THE STATE OF ALABAMA, APPROVED

FEBRUARY 16, 1897,

ENTITLED "AN ACT TO ADOPT A CODE OF LAWS FOR THE STATE OF ALABAMA,"

WITH SUCH STATUTES PASSED AT THE SESSION OF 1896-97, AS ARE REQUIRED TO BE INCORPORATED THEREIN BY ACT APPROVED FEBRUARY 17, 1897; AND WITH CITATIONS TO THE DECISIONS OF THE SUPREME COURT OF THE STATE CONSTRUING OR MENTIONING THE STATUTES.

IN TWO VOLUMES.

VOL. II.

PREPARED BY

WILLIAM L. MARTIN,

COMMISSIONER.

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CERTIFICATE OF THE COMMISSIONER.

I, WILLIAM L. MARTIN, the Commissioner appointed under the provisions of an act of the General Assembly of Alabama approved February 18, 1895, entitled "An act to provide for the revision, codification, digesting and promulgation of the statutes of this state, both civil and criminal," and, under the provisions of an act of the General Assembly of Alabama approved February 17, 1897, entitled "An act to provide for the publication and distribution of the Code of Alabama," charged with the duty of supervising the publication of the Code of Alabama adopted by an act of the General Assembly of Alabama approved February 16, 1897, entitled "An act to adopt a code of laws for the State of Alabama," do hereby certify that I have compared the Code, as printed, with the original manuscript as adopted by the General Assembly, and that the Code, as printed, is the same as adopted by the General Assembly.

WILLIAM L. MARTIN,
Commissioner.

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Comparative table of sections contained in both the Civil and Criminal Codes, showing the number which each section brought from the Code of 1886 bears in this Code, and also the sections of the former Code which are omitted from this Code.

DECLARATION OF INDEPENDENCE.

IN CONGRESS, JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident:—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good. He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained: and when so suspended he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolution, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the State remaining, in the meantime, exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to

pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offenses:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our government:

For suspending our own legislatures, and declaring themselves invested with powers to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections among us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind—enemies in war, in peace, friends.

We, therefore, the representatives of the UNITED STATES OF AMERICA, in GENERAL CONGRESS assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the name and by authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as *FREE AND INDEPENDENT STATES*, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which INDEPENDENT STATES may of right do. And, for the support of this declaration, with a firm reliance on the protection of DIVINE PROVIDENCE, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

JOHN HANCOCK.

New Hampshire.

JOSIAH BARTLETT,
WILLIAM WHIPPLE,
MATTHEW THORNTON.

Massachusetts Bay.

SAMUEL ADAMS,
JOHN ADAMS,
ROBERT TREAT PAYNE,
ELBRIDGE GERRY.

Rhode Island, &c.

STEPHEN HOPKINS,
WILLIAM ELLERY.

Connecticut.

ROGER SHERMAN,
SAMUEL HUNTINGTON,
WILLIAM WILLIAMS,
OLIVER WOLCOTT.

New York.

WILLIAM FLOYD,
PHILIP LIVINGSTON,
FRANCIS LEWIS,
LEWIS MORRIS.

New Jersey.

RICHARD STOCKTON,
JOHN WITHERSPOON,
FRANCIS HOPKINSON,
JOHN HART,
ABRAHAM CLARK.

Pennsylvania.

ROBERT MORRIS,
BENJAMIN RUSH,
BENJAMIN FRANKLIN,
JOHN MORTON,
GEORGE CLYMER,
JAMES SMITH,
GEORGE TAYLOR,
JAMES WILSON,
GEORGE ROSS.

Delaware.

CÆSAR RODNEY,
GEORGE READ,
THOMAS MCKEAN.

Maryland.

SAMUEL CHASE,
WILLIAM PACA,
THOMAS STONE,
CHARLES CARROLL,
OF CARROLLTON.

Virginia.

GEORGE WYTHE,
RICHARD HENRY LEE,
THOMAS JEFFERSON,
BENJAMIN HARRISON,
THOMAS NELSON, JR.,
FRANCIS LIGHTFOOT LEE,
CARTER BRAXTON.

North Carolina.

WILLIAM HOOPER.
JOSEPH HEWES,
JOHN PENN.

South Carolina.

EDWARD RUTLEDGE,
THOMAS HEYWARD, JR.,
THOMAS LYNCH, JR.,
ARTHUR MIDDLETON.

Georgia.

BUTTON GWINNETT,
LYMAN HALL,
GEORGE WALTON.

ARTICLES OF CONFEDERATION.

IN CONGRESS, JULY 9, 1778.

ARTICLES OF CONFEDERATION AND PERPETUAL UNION

Between the States of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ARTICLE I.

The style of this confederacy shall be, "*The United States of America.*"

ARTICLE II.

Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

ARTICLE III.

The said states hereby severally enter into a firm league of friendship with each other for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

ARTICLE IV.

§1. The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and egress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively; *Provided*, that such restrictions shall not extend so far as to prevent the removal of property imported into any state to any other state of which the owner is an inhabitant; *Provided, also*, that no imposition, duties or restriction shall be laid by any state on the property of the United States, or either of them.

§2. If any person guilty of or charged with treason, felony, or other high misdemeanor in any state shall flee from justice and be found in any of the United States, he shall, upon the demand of the governor or executive power of the state from which he fled, be delivered up, and removed to the state having jurisdiction of his offense.

§3. Full faith and credit shall be given in each of these states to the records, acts, and judicial proceedings of the courts and magistrates of every other state.

ARTICLE V.

§1. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each state to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

§2. No state shall be represented in congress by less than two, nor more than seven members; and no person shall be capable of being a delegate for

more than three years in any term of six years; nor shall any person being a delegate be capable of holding any office under the United States for which he, or any other for his benefit, receives any salary, fees, or emolument of any kind.

§3. Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of these states.

§4. In determining questions in the United States in congress assembled, each state shall have one vote.

§5. Freedom of speech and debate in congress shall not be impeached or questioned in any court or place out of congress, and the members of congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from and attendance on congress, except for treason, felony, or breach of the peace.

ARTICLE VI.

§1. No state, without the consent of the United States in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state; nor shall the United States in congress assembled, or any of them, grant any title of nobility.

§2. No two or more states shall enter into any treaty, confederation or alliance whatever, between them, without the consent of the United States in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

§3. No state shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States in congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by congress to the courts of France and Spain.

§4. No vessels of war shall be kept up in time of peace by any state, except such number only as shall be deemed necessary by the United States in congress assembled, for the defense of such state or its trade; nor shall any body of forces be kept up by any state in time of peace, except such number only as in the judgment of the United States in congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such state; but every state shall always keep up a regular and well-disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use in public stores a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

§5. No state shall engage in any war without the consent of the United States in congress assembled, unless such state be actually invaded by the enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of delay till the United States in congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in congress assembled, and then only against a kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion and kept so long as the danger shall continue, or until the United States in congress assembled shall determine otherwise.

ARTICLE VII.

When land forces are raised by any state for the common defense, all officers of or under the rank of colonel shall be appointed by the legislature

of each state respectively by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

ARTICLE VIII.

All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in congress assembled shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States in congress assembled.

ARTICLE IX.

§1. The United States in congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article, of sending and receiving ambassadors, entering into treaties and alliances; *Provided*, that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of captures; *Provided*, that no member of congress shall be appointed a judge of any of the said courts.

§2. The United States in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more states concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any state in controversy with another, shall present a petition to congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as congress shall direct, shall, in the presence of congress, be drawn out by lot; and the persons whose names shall be drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons which congress shall judge sufficient, or being present, shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclu-

sive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress, for the security of the parties concerned; *Provided*, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward"; *Provided, also*, that no state shall be deprived of territory for the benefit of the United States.

§3. All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions, as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the congress of the United States, be finally determined, as near as may be, in the same manner, as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

§4. The United States in congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians not members of any of the states; *Provided*, that the legislative right of any state, within its own limits, be not infringed or violated; establishing and regulating post-offices from one state to another throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

§5. The United States in congress assembled shall have authority to appoint a committee, to sit in the recess of congress, to be denominated "*A Committee of the States*," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside; *Provided*, That no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state, which requisition shall be binding; and thereupon the legislature of each state shall appoint the regimental officers, raise the men, clothe, arm and equip them, in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in congress assembled; but if the United States in congress assembled shall, on consideration of circumstances, judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed and equipped in the same manner as the quota of such state, unless the legislature of such state

shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm and equip as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in congress assembled.

§6. The United States in congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine states assent to the same, nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the vote of a majority of the United States in congress assembled.

§7. The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state, on any question, shall be entered on the journal when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states.

ARTICLE X.

The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the United States in congress assembled, by the consent of nine states, shall, from time to time, think expedient to vest them with; *Provided*, that no power be delegated to the said committee for the exercise of which, by the Articles of Confederation, the voice of nine states, in the congress of the United States assembled, is requisite.

ARTICLE XI.

Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

ARTICLE XII.

All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for the payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ARTICLE XIII.

Every state shall abide by the determination of the United States in congress assembled, in all questions which by this confederation are submitted to them; and the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a congress of the United States, and be afterward confirmed by the legislature of every state.

And whereas, it hath pleased the great Governor of the world to incline the hearts of the legislatures we respectfully represent in congress, to approve of, and to authorize us to ratify the said Articles of Confederation and perpetual union, KNOW YE, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determination of the United States in congress assembled, in all questions which by the said confederation are submitted to them; and that the articles thereof shall be inviolably observed by the States we respectfully represent, and that the union shall be perpetual.. In witness whereof, we have hereunto set our hands, in congress.

Done at Philadelphia in the State of Pennsylvania, the 9th day of July, in the year of our Lord, 1778, and in the third year of the Independence of America.

New Hampshire.

JOSIAH BARTLETT,
JOHN WENTWORTH, JR.

Massachusetts Bay.

JOHN HANCOCK,
SAMUEL ADAMS,
ELBRIDGE GERRY,
FRANCIS DANA,
JAMES LOVEL,
SAMUEL HOLTEN,
WILLIAM ELLERY,
HENRY MARCHANT,
JOHN COLLINS.

Pennsylvania.

ROBERT MORRIS,
DANIEL ROBERDEAU,
JONA. BAYARD SMITH,
WILLIAM CLINGAN,
JOSEPH REED.

Delaware.

THOS. M'KEAN,
JOHN DICKINSON,
NICHOLAS VANDYKE.

Maryland.

JOHN HANSON,
DANIEL CARROLL.

Virginia.

RICHARD HENRY LEE,
JOHN BANNISTER,
THOMAS ADAMS,
JNO. HARVIE,
FRANCIS LIGHTFOOT LEE.

Connecticut.

ROGER SHERMAN,
SAMUEL HUNTINGTON,
OLIVER WOLCOTT,
TITUS HOSMER,
ANDREW ADAMS.

New York.

JAS. DUANE,
FRA. LEWIS,
WM. DUER,
GOUV. MORRIS.

New Jersey.

JNO. WITHERSPOON,
NATH. SCUDDER.

North Carolina.

JOHN PENN,
CORNS. HARNETT,
JNO. WILLIAMS.

South Carolina.

HENRY LAURENS,
WILLIAM HENRY DRAYTON,
JNO. MATTHEWS,
RICHARD HUTSON,
THOMAS HEYWARD, JR.

Georgia.

JNO. WALTON,
EDW. TELFAIR,
EDWD. LANGWORTHY.

CONSTITUTION OF THE UNITED STATES—1787.

(Went into operation Wednesday, March 4, 1789.—Owings v. Speed, 5 Wheaton, 420.)

WE, THE PEOPLE of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE 1.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION 2. [1]The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

[2]No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

[3]*[Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.] The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

[4]When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

[5]The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SECTION 3. [1]The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

[2]Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

[3]No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who

*The clause in brackets is amended by the 14th amendment, 2d section.

[For annotated Constitution, with historical notes and analytical index, see Vol. I, pp. 6–59.]

shall not, when elected, be an inhabitant of that state for which he shall be chosen.

[4]The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

[5]The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

[6]The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

[7]Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4. [1]The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

[2]The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5. [1]Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

[2]Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

[3]Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

[4]Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6. [1]The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

[2]No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECTION 7. [1]All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

[2]Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall

enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

[3]Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8. The congress shall have power:—[1]To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

[2]To borrow money on the credit of the United States;

[3]To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

[4]To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

[5]To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

[6]To provide for the punishment of counterfeiting the securities and current coin of the United States;

[7]To establish post-offices and post-roads;

[8]To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

[9]To constitute tribunals inferior to the supreme court;

[10]To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

[11]To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

[12]To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

[13]To provide and maintain a navy;

[14]To make rules for the government and regulation of the land and naval forces;

[15]To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

[16]To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

[17]To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—And

[18]To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

SECTION 9. [1]The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

[2]The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

[3]No bill of attainder or ex post facto law shall be passed.

[4]No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

[5]No tax or duty shall be laid on articles exported from any state.

[6]No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

[7]No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

[8]No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECTION 10. [1]No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

[2]No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

[3]No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1. [1]The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected, as follows:

[2]Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[3]The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

[4]No person except a natural-born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

[5]In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

[6]The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

[7]Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. [1]The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

[2]He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

[3]The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

SECTION 3. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4. The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SECTION 2. [1]The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States

shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states,—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

[2]In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

[3]The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION 3. [1]Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

[2]The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceeding of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION 2. [1]The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

[2]A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

[3]No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3. [1]New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

[2]The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths

thereof, as the one or the other mode of ratification may be proposed by the congress; Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

[1]All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[2]This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding

[3]The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present the seventeenth day of September in the year of our lord one thousand seven hundred and eighty-seven and of the independence of the United States of America the twelfth. **In Witness** whereof we have hereunto subscribed our names,

G.º WASHINGTON—
Presidt. and Deputy from Virginia.

New Hampshire.

John Langdon,
Nicholas Gilman.

Massachusetts.

Nathaniel Gorham,
Rufus King.

Connecticut.

Wm. Saml. Johnson,
Roger Sherman.

New York.

Alexander Hamilton.

New Jersey.

Wil: Livingston,
David Brearley,
Wm. Paterson,
Jona. Dayton.

Pennsylvania.

B. Franklin,
Robt. Morris,
Tho: Fitzsimons,
James Wilson,
Thomas Mifflin,
Geo: Clymer,
Jared Ingersoll,
Gouv: Morris.

Delaware.

Geo: Read,
John Dickinson,
Jaco: Broom,
Gunning Bedford, Jun'r,
Richard Bassett.

Maryland.

James M'Henry,
Danl Carroll,
Dan: of St. Thos. Jenifer.

Virginia.

John Blair,
James Madison, Jr.

North Carolina.

WM. BLOUNT,
HU. WILLIAMSON,
RICH'D DOBBS SPAIGHT.

South Carolina.

J. RUTLEDGE,
CHARLES PINCKNEY,
CHARLES COTESWORTH PINCKNEY,
PIERCE BUTLER.

Georgia.

WILLIAM FEW,
ABR. BALDWIN.

Attest: WILLIAM JACKSON, *Secretary.*

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty

dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate;—The president of the senate shall, in presence of the senate and house of representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

ARTICLE XIII.

SECTION 1. Neither slavery nor involuntary servitude, except as a punish-

ment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

SECTION 3. No person shall be a senator or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may by a vote of two-thirds of each house, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

SECTION 2. The congress shall have power to enforce this article by appropriate legislation.

ORDINANCE OF 1787.

AN ORDINANCE.

For the government of the Territory of the United States northwest of the River Ohio.

Be it ordained by the United States in Congress assembled, That the said territory, for the purpose of temporary government, be one district, subject, however, to be divided into two districts, as the future circumstances may, in the opinion of congress, make it expedient.

Be it ordained by the authority aforesaid, That the estates both of residents and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among their children, and the descendants of a deceased child, in equal parts, the descendants of a deceased child or grandchild to take the share of their deceased parent in equal parts among them; and where there shall be no children or descendants, then in equal parts to the next of kin in equal degree, and among collaterals, the children of a deceased brother or sister of an intestate shall have, in equal parts among them, their deceased parent's share, and there shall, in no case, be a distinction between kindred of the whole and half blood, saving, in all cases, to the widow of the intestate her third part of the real estate for life, and one-third of the personal estate; and this law relative to descents and dower shall remain in full force until altered by the legislature of the district; and until the governor and judges shall adopt laws, as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her in whom the estate may be (being of full age), and attested by three witnesses; and real estates may be conveyed by lease and releases, or bargain and sale, signed, sealed and delivered by the person (being of full age) in whom the estates may be, and attested by two witnesses; *Provided*, that such wills be duly proved, and such conveyances be acknowledged or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskasias, St. Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them relative to the descent and conveyance of property.

Be it ordained by the authority aforesaid, That there shall be appointed from time to time, by congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by congress. He shall reside in the district and have a freehold estate therein in one thousand acres of land, while in the exercise of his office.

There shall be appointed from time to time, by congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked. He shall reside in the district, and have a freehold estate therein in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings, every six months, to the secretary of congress.

There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common-law jurisdiction, and reside in the district, and shall have each therein a freehold estate in five hundred acres of land, while in the exercise of their offices; and their commission shall continue in force during good behavior.

The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original states, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to congress from time to time; which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

The governor for the time being shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers. All general officers shall be appointed and commissioned by congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order of the same.

After the general assembly shall be organized, the powers and duties of the magistrates and other civil officers shall be regulated and defined by the said assembly, but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships to represent them in the general assembly; *Provided*, that for every five hundred free male inhabitants there shall be one representative, and so on, progressively with the number of free male inhabitants, shall the right of representation increase until the number of representatives shall amount to twenty-five; after which, the number and proportion of representatives shall be regulated by the legislature; *Provided*, that no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years, and, in either case, shall likewise hold in his own right, in fee simple, two hundred acres of land within the same; *Provided*, *also*, that a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected shall serve for the term of two years; and in case of the death of a representative or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by congress, any three of whom to be a quorum; and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to congress, five of whom congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house

of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to congress, one of which congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of the council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to congress, five of whom congress shall appoint and commission to serve as members of the council five years, unless sooner removed.

And the governor, legislative council and house of representatives shall have authority to make laws, in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared.

And all bills passed by a majority in the house, and by a majority in the council shall be referred to the governor for his assent, but no bill or legislative act whatever shall be of any force without his assent.

The governor shall have power to convene, prorogue, and dissolve the general assembly when, in his opinion, it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office, the governor before the president of congress, and all other officers before the governor.

As soon as a legislature shall be formed in the district, the council and house, assembled in one room, shall have authority, by joint ballot, to elect a delegate to congress, who shall have a seat in congress, with the right of debating, but not of voting during this temporary government.

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions and governments which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of states, and permanent government therein, and for their admission to a share in the Federal councils on an equal footing with the original states, at as early a period as may be consistent with the general interest—

It is hereby ordained and declared by the authority aforesaid, That the following articles shall be considered as articles of compact between the original states and the people and states in the said territory, and forever remain unalterable, unless by common consent, to wit:

ARTICLE 1. No person demeaning himself in a peaceable, orderly manner shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

ART. 2. The inhabitants of said territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offenses where the proof shall be evident or the presumption great.

All fines shall be moderate; no cruel or unusual punishment shall be inflicted.

No man shall be deprived of his liberty or property, but by judgment of his peers, or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or to have force in the said territory, that shall, in any manner whatever, interfere with, or affect, private contracts, or engagements, bona fide and without fraud, previously formed.

ART. 3. Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be ob-

served towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty, they never shall be invaded, or disturbed, unless in just and lawful wars, authorized by congress; but laws founded in justice and humanity, shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ART. 4. The said territory, and the state which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made, and to all the acts and ordinances of the United States in congress assembled conformable thereto.

The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts, contracted, or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by congress according to the same common rule and measure by which apportionment thereof shall be made on other states; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district, or districts, or new states, as in the original states, within the time agreed upon by the United States in congress assembled. The legislatures of those districts, or new states, shall never interfere with the primary disposal of the soil by the United States in congress assembled, nor with any regulations congress may find necessary for securing the title in such soil to bona fide purchasers. No tax shall be imposed on lands, the property of the United States, and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax imposed, or duty therefor.

ART. 5. There shall be formed in the said territory not less than three nor more than five states, and the boundaries of the states, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit:

The Western state in the said territory shall be bounded by the Mississippi, the Ohio and Wabash rivers, a direct line drawn from the Wabash and Port Vincents due north to the territorial line between the United States and Canada, and by said territorial line to the Lake of the Woods and Mississippi.

The Middle state shall be bounded by the said direct line, the Wabash, from Port Vincents to the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line.

The Eastern state shall be bounded by the last-mentioned direct line, the Ohio, Pennsylvania, and the said territorial line.

Provided however, and it is further understood and declared, that the boundaries of these three states shall be subject so far to be altered that, if congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan, and when any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted, by its delegates, into the congress of the United states, on an equal footing with the original states, in all respects whatever, and shall be at liberty to form a permanent constitution and state government; *Provided*, the constitution and government so to be formed shall be republican, and in conformity to the principles contained in these articles; and so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than sixty thousand.

ART. 6. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted; *Provided always*, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor, or service, as aforesaid.

Be it ordained by the authority aforesaid, that the resolutions of the twenty-third of April, seventeen hundred and eighty-four, relative to the subject of this ordinance, be and the same are hereby repealed and declared null and void.

Adopted July 13, 1787.

ACT ESTABLISHING THE MISSISSIPPI TERRITORY.

AN ACT

For the amicable settlement of limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi Territory.

SECTION 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That the president of the United States be, and he hereby is authorized to appoint three commissioners; any two of whom shall have power to adjust and determine with such commissioners as may be appointed under the legislative authority of the State of Georgia, all interfering claims of the United States and that state, to territory situate west of the river Chattahoochee, north of the thirty-first degree of north latitude, and south of the cession made to the United States by South Carolina: And also to receive any proposals for the relinquishment or cession of the whole or any part of the other territory claimed by the State of Georgia, and out of the ordinary jurisdiction thereof.

SEC. 2. *Be it further enacted*, That all the lands thus ascertained as the property of the United States, shall be disposed of in such manner as shall be hereafter directed by law; and the net proceeds thereof shall be applied to the sinking and discharging the public debt of the United States, in the same manner as the proceeds of the other public lands in the territory northwest of the river Ohio.

SEC. 3. *Be it further enacted*, That all that tract of country bounded on the west by the Mississippi; on the north by a line to be drawn due east from the mouth of the Yasous to the Chattahoochee river; on the east by the river Chattahoochee; and on the south by the thirty-first degree of north latitude, shall be, and hereby is constituted one district, to be called the Mississippi Territory; and the president of the United States is hereby authorized to establish therein a government in all respects similar to that now exercised in the territory northwest of the river Ohio, excepting and excluding the last article of the ordinance made for the government thereof by the late congress on the thirteenth day of July one thousand seven hundred and eighty-seven, and by and with the advice and consent of the senate to appoint all the necessary officers therein, who shall respectively receive the same compensation for their services, to be paid in the same manner as by law established for similar officers in the territory northwest of the river Ohio; and the powers, duties and emoluments of a superintendent of Indian affairs for the southern department, shall be united with those of governor: *Provided always*, that if the president of the United States should find it most expe-

dient to establish this government in the recess of congress, he shall nevertheless have full power to appoint and commission all officers herein authorized; and their commissions shall continue in force until the end of the session of congress next ensuing the establishment of the government.

SEC. 4. *Be it further enacted*, That the territory hereby constituted one district for the purpose of government, may at the discretion of congress be hereafter divided into two districts, with separate territorial governments in each, similar to that established by this act.

SEC. 5. *Be it further enacted*, That the establishment of this government shall in no respect impair the right of the State of Georgia, or of any person or persons either to the jurisdiction or the soil of the said territory, but the rights and claims of the said state and of all persons interested, are hereby declared to be as firm and available, as if this act had never been made.

SEC. 6. *And be it further enacted*, That from and after the establishment of the said government, the people of the aforesaid territory, shall be entitled to and enjoy all and singular the rights, privileges and advantages granted to the people of the territory of the United States, northwest of the river Ohio, in and by the aforesaid ordinance of the thirteenth day of July, in the year one thousand seven hundred and eighty-seven, in as full and ample a manner as the same are possessed and enjoyed by the people of the said last-mentioned territory.

SEC. 7. *And be it further enacted*, That from and after the establishment of the aforesaid government, it shall not be lawful for any person or persons to import or bring into the said Mississippi territory, from any port or place without the limits of the United States, or to cause or procure to be so imported or brought, or knowingly to aid or assist in so importing or bringing any slave or slaves, and that every person so offending, and being thereof convicted before any court within the said territory, having competent jurisdiction, shall forfeit and pay, for each and every slave so imported or brought, the sum of three hundred dollars; one moiety for the use of the United States, and the other moiety for the use of any person or persons who shall sue for the same; and that every slave, so imported or brought, shall thereupon become entitled to, and receive his or her freedom.

SEC. 8. *And be it further enacted*, That the sum of ten thousand dollars be, and hereby is appropriated, for the purpose of enabling the President of the United States to carry into effect the provisions of this act; and that the said sum be paid out of any monies in the treasury not otherwise appropriated.

Approved April 7, 1798.

(1 U. S. Statutes at Large, 549.)

ACT FOR GOVERNMENT OF MISSISSIPPI TERRITORY.

AN ACT

Supplemental to the Act entitled "An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi territory."

SECTION 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That so much of the ordinance of congress of the thirtieth of July, one thousand seven hundred and eighty-seven, and of the act of congress of the seventh of August, one thousand seven hundred and eighty-nine, providing for the government of the territory of the

United States northwest of the river Ohio, as relates to the organization of a general assembly therein, and prescribes the powers thereof, shall forthwith operate and be in force in the Mississippi territory; *Provided*, that until the number of free male inhabitants of full age, in the said territory, shall amount to five thousand, there shall not be returned to the general assembly more than nine representatives.

SEC. 2. *And be it further enacted*, That until the number of free male inhabitants of full age in the Mississippi territory shall amount to five thousand, the county of Adams shall be entitled to choose four representatives to the general assembly, the county of Pickering four, and the Tensaw and Tombigbee settlements, one.

SEC. 3. *And be it further enacted*, That the first election, for representatives to the general assembly, shall be on the fourth Monday in July next, and that all subsequent elections shall be regulated by the legislature.

SEC. 4. *And be it further enacted*, That it shall be the duty of the governor of the Mississippi territory, to cause the said election to be holden on the day aforesaid, at the most convenient place in the counties and settlements aforesaid, and to nominate a proper officer or officers to preside at and conduct the same, and to return to him the names of the persons who may have been duly elected.

SEC. 5. *And be it further enacted*, That the representatives shall be convened by the governor at the town of Natchez, on the fourth Monday in September next.

SEC. 6. *And be it further enacted*, That so soon as the number of free male inhabitants of full age shall amount to, or exceed five thousand, the number of representatives to the general assembly shall be determined, and the apportionment made in the way prescribed in the ordinance.

SEC. 7. *And be it further enacted*, That nothing in this act shall in any respect impair the right of the State of Georgia to the jurisdiction, or of the said state, or of any person or persons to the soil of the said territory, but the rights and claims of the said state, and all persons interested, are hereby declared to be as firm and available as if this act had never been made.

SEC. 8. *And be it further enacted*, That the general assembly shall meet at least once in every year, and such meeting shall be on the first Monday of December, unless they shall by law appoint a different day; *Provided*, that the governor shall have power on extraordinary occasions to convene the general assembly.

SEC. 9. *And be it further enacted*, That neither house during the session of the general assembly shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. 10. *And be it further enacted*, That it shall be lawful for the commissioners appointed, or who may hereafter be appointed on the part of the United States, in pursuance of the act, entitled "An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi territory," or any two of them, finally to settle by compromise with the commissioners, which have been or may be appointed by the State of Georgia, any claims mentioned in said act, and to receive in behalf of the United States a cession of any lands therein mentioned, or of the jurisdiction thereof, on such terms as to them shall appear reasonable; and also, that the said commissioners on the part of the United States, or any two of them, be authorized to inquire into the claims which are or shall be made by settlers or any other person whatsoever, to any part of the aforesaid lands, and to receive from such settlers and claimants any propositions of compromise which may be made by them, and lay a full statement of the claims and the propositions which may be made to them by the settlers or claimants to any part of the said lands, together with their opinion thereon, before congress, for their decision thereon, as soon as may be; *Provided*, that the settlement shall be made and com-

pleted before the fourth day of March, one thousand eight hundred and three; *And provided also*, that the said commissioners shall not contract for the payment of any money from the treasury of the United States to the State of Georgia, other than the proceeds of the same lands.

Approved May 10, 1800.

(2 U. S. Stat. at Large, 69.)

CESSION BY GEORGIA TO THE UNITED STATES.

ARTICLES OF CESSION AND AGREEMENT

Entered into on the fourteenth day of April, one thousand eight hundred and two, between the commissioners appointed on the part of the United States, by virtue of an act entitled, "An act for the amicable settlement of limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi Territory," and of the act supplemental to the last-mentioned; act, on the one part; and the commissioners appointed on the part of the State of Georgia, by virtue of an act entitled, "An act to carry the twenty-third section of the first article of the constitution into effect," and of the act to amend the last-mentioned act, on the other part.

ARTICLE I.

The State of Georgia cedes to the United States all the right, title and claim which the said state has to the jurisdiction and soil of the lands situated within the boundaries of the United States south of the State of Tennessee, and west of a line beginning on the western bank of the Chattahoochee river, where the same crossed the boundary line between the United States and Spain, running thence up the said river Chattahoochee, and along the western bank thereof, next above the place where a certain creek or river called "Uche" (being the first considerable stream on the western side, above the Cusseta and Coweta towns), empties into the said Chattahoochee river; thence in a direct line to Nickajack, on the Tennessee river; then crossing the said last-mentioned river, and thence running up the said Tennessee river, and along the western bank thereof, to the southern boundary line of the State of Tennessee; upon the following express conditions, and subject thereto, that is to say:

1. That out of the first net proceeds of the sale of the lands thus ceded, which net proceeds shall be estimated by deducting from the gross amount of sales the expenses incurred in surveying, and incident to the sale, the United States shall pay out of their treasury one million, two hundred and fifty thousand dollars to the State of Georgia, as a consideration for the expenses incurred by the said state in relation to the said territory; and that for the better securing as prompt a payment of the said sum as practicable, land-office for the disposition of the vacant lands thus ceded, to which the Indian title has been, or may hereafter be extinguished, shall be opened within a twelvemonth after the assent of the State of Georgia to this agreement, as hereafter stated, shall have been declared.

2. That all persons who, on the twenty-seventh day of October, one thousand seven hundred and ninety-five, were actual settlers within the territory thus ceded, shall be confirmed in all the grants legally and fully executed prior to that day, by the former British government of West Florida, or by the government of Spain, and in the claims which may be derived from

any actual survey or settlement made under the act of the State of Georgia, entitled, "An act for laying out a district of land situate on the river Mississippi, and within the bounds of this state, into a county called Bourbon," passed the seventh day of February, one thousand, seven hundred and eighty-five.

3. That all lands ceded by this agreement to the United States, shall, after satisfying the above-mentioned payment of one million, two hundred and fifty thousand dollars to the State of Georgia, and the grants recognized by the preceding condition be a common fund for the use and benefit of the United States, Georgia included, and shall be faithfully disposed of for that purpose, and for no other use or purpose whatever; *Provided*, however, that the United States, for the period and until the end of one year after the assent of Georgia to the boundary establishment by this agreement shall have been declared, may in such manner as not to interfere with the above-mentioned payment to the State of Georgia, nor with the grants hereinbefore recognized, dispose of or appropriate a portion of the said lands, not exceeding five millions of acres, or of any part thereof, for the purpose of satisfying, quieting or compensating for any claims other than those hereinbefore recognized, which may be made to the said lands or any part thereof. It being fully understood that if an act of congress making such disposition or appropriation shall not be passed into a law within the above-mentioned period of one year, the United States shall not be at liberty thereafter, to cede any part of the said lands on account of claims which may be laid on the same, other than those recognized by the preceding condition, nor to compensate for the same; and in case of any such cession or compensation, the present cession of the State of Georgia to the right of soil over the lands thus ceded or compensated for, shall be considered as null and void, and the lands thus ceded or compensated for, shall revert to the State of Georgia.

4. That the United States shall, at their own expense, extinguish for the use of Georgia, as early as the same can be peaceably obtained on reasonable terms, the Indian title to the country of Tallassee, to the lands left out by the line drawn with the Creeks in the year one thousand seven hundred and ninety-eight, which had been previously granted by the State of Georgia, both which tracts had formerly been yielded by the Indians; and to the lands within the forks of Oconee and Oakmulgee rivers; for which several objects, the United States have directed that a treaty should be immediately held with the Creeks; and that the United States shall, in the same manner, also extinguish the Indian title to all the other lands within the State of Georgia.

5. That the territory thus ceded shall form a state, and be admitted as such into the Union, as soon as it shall contain sixty thousand free inhabitants, or at an earlier period if congress shall think it expedient, on the same conditions and restrictions, with the same privileges, and in the same manner as is provided in the ordinance of congress of the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the western territory of the United States; which ordinance shall, in all its parts, extend to the territory contained in the present act of cession, that article only excepted which forbids slavery.

ARTICLE II.

The United States accept the cession above mentioned, and on the conditions therein expressed; and they cede to the State of Georgia, whatever claim, right or title they may have to the jurisdiction or soil of any lands lying within the United States, and out of the proper boundaries of any other state, and situated south of the southern boundaries of the states of Tennessee, North Carolina, and South Carolina, and east of the boundary line herein above described, as the eastern boundary of the territory ceded by Georgia to the United States.

ARTICLE III.

The present act of cession or agreement shall be in force as soon as the legislature of Georgia shall have given its assent to the boundaries of this cession; *Provided*, that the said assent shall be given within six months after the date of these presents; *And provided*, that congress shall not, during the same period of six months, repeal so much of any former law as authorizes this agreement, and renders it binding and conclusive on the United States: But if either the assent of Georgia shall not be thus given, or if the law of the United States shall be thus repealed within the said period of six months, then, and in either case, these presents shall become null and void.

In faith whereof, the respective commissioners have signed these presents and affixed their seals. Done at the City of Washington in the District of Columbia, this 24th day of April, 1802.

(Seal.) JAMES MADISON,
(Seal.) ALBERT GALLATIN,
(Seal.) LEVI LINCOLN,
Commissioners on the part of the United States.

(Seal.) JAMES JACKSON,
(Seal.) ABRAHAM BALDWIN,
(Seal.) JOHN MILLEDGE,
Commissioners on the part of the State of Georgia.

Witnesses,
J. FRANKLIN,
Senator of the United States, for North Carolina.
SAMUEL A. OTIS,
Secretary of the Senate of the United States.
JOHN BECKLEY,
Clerk of the House of Rep. of the United States.

(Miss. Terr. Stats. (1816) p. 35.)

ACTS ENLARGING THE BOUNDARIES OF MISSISSIPPI TERRITORY.

AN ACT

Enlarging the boundaries of the Mississippi Territory, entitled "An act supplementary to the act entitled, 'An act regulating the grants of land, providing for the disposal of the lands of the United States, south of the State of Tennessee.'"

SECTION 7. *And be it further enacted*, That the tract of country lying north of the Mississippi territory, and south of the State of Tennessee, and bounded on the east by the State of Georgia, and on the west by Louisiana, shall be, and the same is hereby annexed to, and made a part of the Mississippi territory.

Approved March 27, 1804.

(2 U. S. Statutes at Large, 303.)

AN ACT

To enlarge the boundaries of the Mississippi territory.

Be it enacted by the Senate and House of Representatives of the United States of America in congress assembled, That all that portion of territory lying east of Pearl river, west of the Perdido, and south of the thirty-first degree of latitude, be and the same is hereby annexed to the Mississippi territory; to be governed by the laws now in force therein, or which may hereafter be enacted, and the laws and ordinances of the United States relative thereto, in like manner as if the same had originally formed a part of said territory; and until otherwise provided by law, the inhabitants of the said district hereby annexed to the Mississippi territory, shall be entitled to one representative in the general assembly thereof.

Approved May 14, 1812.

(2 U. S. Statutes at Large, 734.)

ACT ESTABLISHING THE ALABAMA TERRITORY.

Be it enacted by the Senate and House of Representatives of the United States of America in congress assembled, That all that part of the Mississippi territory which lies within the following boundaries, to wit: Beginning at the point where the line of the thirty-first degree of north latitude intersects the Perdido river, thence east to the western boundary line of the State of Georgia, thence along said line to the southern boundary of the State of Tennessee, thence west along said boundary line to the Tennessee river, thence up the same to the mouth of Bear creek, thence by a direct line to the northwest corner of Washington county, thence due south to the Gulf of Mexico, thence eastwardly, including all the islands within six leagues of the shore, to the Perdido river, and thence up the same to the beginning, shall, for the purpose of a temporary government, constitute a separate territory, and be called, "Alabama."

SEC. 2. *And be it further enacted*, That all offices which may exist, and all laws which may be in force, in said territory, within the boundaries above described, at the time this act shall go into effect, shall continue to exist, and be in force, until otherwise provided by law. And the president of the United States shall have the power to appoint a governor and secretary for the said Alabama territory, who shall respectively exercise the same power, perform the same duties, and receive for their services the same compensation, as are provided for the governor and secretary of the Mississippi territory: *Provided*, that the appointment of said governor and secretary, shall be submitted to the senate, for their advice and consent, at the next session of congress.

SEC. 3. *And be it further enacted*, That there shall be appointed an additional judge for the Mississippi territory who shall reside in the eastern part thereof, and receive the same compensation as the other judges; and that the judge appointed by virtue of an act, passed the twenty-seventh day of March, one thousand eight hundred and four, for the appointment of an additional judge for the Mississippi territory, together with the judge appointed for Madison county, and the judge to be appointed by virtue of this act, shall possess and exercise exclusive original jurisdiction in the superior courts of

Washington, Baldwin, Clarke, Monroe, Montgomery, Wayne, Greene, Jackson, Mobile, Madison and of such new counties as may be formed out of them, and shall arrange the same among themselves, from time to time: *Provided*, that no judge shall sit more than twice in succession in the same court, and that the other judges of the Mississippi territory shall exercise, as heretofore authorized by an act of congress, or of the territorial legislature, exclusive jurisdiction in the superior courts of the other counties. That a general court, to be composed of the judge appointed by virtue of the act of twenty-seventh of March, one thousand eight hundred and four, the judge appointed for Madison county, and the judge to be appointed by virtue of this act, or any two of them, shall be holden at St. Stephens, commencing on the first Mondays of January and July, annually, who shall have the same power of issuing writs of error to the superior courts of the counties mentioned in this section, or which shall hereafter be formed in the eastern division of the territory, which was given by the act for the appointment of an additional judge, passed the year one thousand eight hundred and four, to the superior court of Adams district, and which shall possess, exclusively of the courts of the several counties, the federal jurisdiction given to the superior courts of the territories, by an act passed the third day of March, one thousand eight hundred and five, entitled "An act to extend jurisdiction in certain cases to the territorial courts."

SEC. 4. *And be it further enacted*, That the governor to be appointed under the authority of this act, shall, immediately after entering into office, convene, at the town of St. Stephens, such of the members of the legislative council and house of representatives, of the Mississippi territory, as may then be the representatives from the several counties within the limits of the territory to be established by this act; and the said members shall constitute the legislative council, and the house of representatives for the aforesaid Alabama territory, whose powers, in relation to the said territory, shall be, until the expiration of the term for which they shall have been chosen, or until congress shall otherwise provide, the same in all respects as are now possessed by the legislative council, and house of representatives of the Mississippi territory; and the said legislative council, and house of representatives of the Alabama territory, so formed, shall have power to nominate six persons to the president of the United States, three of whom shall be selected by him for members of the legislative council, in addition to the number which the said territory may possess, agreeably to the foregoing provisions of this section. The said legislative council and house of representatives, shall also have power to elect a delegate to congress, who shall, in all respects, possess the same rights and immunities as other delegates from territories of the United States.

SEC. 5. *And be it further enacted*, That this act shall commence and be in force so soon as the convention, the appointment whereof has been authorized by congress at their present session, shall have formed a constitution and state government for that part of the Mississippi territory lying west of the territory herein described; of which act of convention the governor of the Mississippi, for the time being, shall give immediate notice to the president of the United States, who shall thereupon forthwith proceed to the execution of the powers vested in him by the second section of this act; but in case said convention shall fail to form a constitution and state government, as aforesaid, then this act shall become null and void, except so far as relates to the third section thereof, which shall take effect, and be in force, from and after the passage of this act.

SEC. 6. *And be it further enacted*, That all persons who shall be in office within the territory hereby established, when the said convention shall have formed a constitution and state government, as aforesaid, shall continue to hold and exercise their offices, in all respects as if this act had never been made; and the governor and secretary of the Mississippi territory, for the time being, shall continue to exercise the duties of their respective offices in

relation to the territory hereby established, until a governor and secretary shall be appointed therefor, in pursuance to this act.

SEC. 7. *And be it further enacted*, That all judicial process in the said territory of Alabama, shall be issued, and bear test as heretofore; nor shall any suit be discontinued, or the proceedings of any cause stayed, or in anywise affected by anything contained in this act, or in the act entitled "An act to enable the people in the western part of the Mississippi territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states."

SEC. 8. *And be it further enacted*, That the town of St. Stephens shall be the seat of government for the said Alabama territory, until it shall be otherwise ordered by the legislature thereof.

SEC. 9. *And be it further enacted*, That whatever balance may remain in the treasury of the Mississippi territory, at the time when the convention authorized to form a constitution and state government, for the western part of said territory, may have formed a constitution and state government for the same, shall be divided between the new state and territory, according to the amount which may have been paid into said treasury from the counties lying within the limits of such state and territory respectively.

Approved March 3, 1817.

(3 U. S. Stats. at Large, 371.)

ACT AMENDING ESTABLISHMENT OF ALABAMA TERRITORY.

AN ACT

To alter and amend an act, approved the third day of March, one thousand eight hundred and seventeen, entitled "An act to establish a separate territorial government for the eastern part of the Mississippi territory."

Be it enacted by the senate and the house of representatives of the United States of America in congress assembled, That the judicial power of the judges of the Alabama territory, appointed, or hereafter to be appointed under the authority of the government of the United States, shall extend as well to any other county or counties which have been or may be found (formed) within the limits of said territory, as to those which are specially mentioned and named in the act entitled "An act to establish a separate territorial government for the eastern part of the Mississippi territory," approved March the third, one thousand eight hundred and seventeen. And that in such county or counties, superior courts shall be holden by said judges in the like manner and with the like powers and jurisdiction as the superior courts are now directed by law to be holden in the counties specially mentioned, as aforesaid, in the act aforesaid. And the powers of the general court of the said territory shall extend to all cases of admiralty and maritime jurisdiction: And their judgments or decrees in such cases shall be subject to appeals to the supreme court of the United States, in like manner, and upon the like terms, as appeals in similar cases are allowed and prosecuted from the judgments or decrees of the circuit courts of the United States.

SEC. 2. *And be it further enacted*, That the legislature of said territory shall have power to appoint, change, and regulate, the times and places for holding the superior courts in each of the counties of said territory, and also to prescribe the number of terms to be holden in each county: *Provided*, they do not exceed two annually.

SEC. 3. *And be it further enacted*, That so much of the said act approved

March the third, one thousand eight hundred and seventeen, as provides "that no judge shall sit more than twice in succession in the same court," be, and the same is hereby, repealed.

SEC. 4. *And be it further enacted*, That the secretary of said territory, judges, members of the legislative council, members of the house of representatives, justices of the peace, and all other officers, civil and military, who may not have taken an oath of office, shall, before they enter on the duties of their respective offices, take an oath or affirmation to support the constitution of the United States, and for the faithful discharge of the duties of their office; which oath or affirmation shall be taken before the governor of the said territory, or such person as he shall appoint and direct.

Approved April 20, 1818.

(3 U. S. Stats. at Large, 468.)

ACT FOR THE ADMISSION OF ALABAMA.

AN ACT

To enable the people of the Alabama territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states.

SECTION 1. *Be it enacted by the senate and house of representatives of the United States of America, in congress assembled*, That the inhabitants of the territory of Alabama be, and they are hereby, authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper; and that the said territory, when formed into a state, shall be admitted into the Union, upon the same footing with the original states, in all respects whatever.

SEC. 2. *And be it further enacted*, That the said state shall consist of all the territory included within the following boundaries, to wit: Beginning at the point where the thirty-first degree of north latitude intersects the Perdido river; thence, east, to the western boundary line of the State of Georgia; thence, along said line, to the southern boundary line of the State of Tennessee; thence, west along said boundary line, to the Tennessee river; thence, up the same, to the mouth of Bear creek; thence, by a direct line, to the northwest corner of Washington county; thence, due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence, up the same to the beginning.

SEC. 3. *And be it further enacted*, That it shall be the duty of the surveyor of the lands of the United States south of the State of Tennessee, and the surveyor of the public lands in the Alabama territory, to run, and cut out the line of demarcation, between the State of Mississippi and the state to be formed of the Alabama territory; and if it should appear to said surveyors, that so much of said line designated in the preceding section, running due south, from the northwest corner of Washington county to the Gulf of Mexico, will encroach on the counties of Wayne, Greene, or Jackson, in said State of Mississippi, then the same shall be so altered as to run in a direct line from the northwest corner of Washington county to a point on the Gulf of Mexico, ten miles east of the mouth of the river Pascagoula.

SEC. 4. *And be it further enacted*, That all white male citizens of the United States who shall have arrived at the age of twenty-one years, and have resided in said territory three months previous to the day of election, and all persons having, in other respects, the legal qualifications to vote for repre-

sentatives in the general assembly of the said territory, be, and they are hereby, authorized to choose representatives to form a constitution, who shall be appointed among the several counties as follows:

From the county of Madison, eight representatives;
From the county of Monroe, four representatives;
From the county of Blount, three representatives;
From the county of Limestone, three representatives;
From the county of Shelby, three representatives;
From the county of Montgomery, two representatives;
From the county of Washington, two representatives;
From the county of Tuscaloosa, two representatives;
From the county of Lawrence, two representatives;
From the county of Franklin, two representatives;
From the county of Cotaco, two representatives;
From the county of Clarke, two representatives;
From the county of Baldwin, one representative;
From the county of Cahawba, one representative;
From the county of Conecuh, one representative;
From the county of Dallas, one representative;
From the county of Marengo, one representative;
From the county of Marion, one representative;
From the county of Mobile, one representative;
From the county of Lauderdale, one representative;
From the county of St. Clair, one representative;
From the county of Autauga, one representative.

And the election for the representatives aforesaid, shall be holden on the first Monday and Tuesday in May next, throughout the several counties in the said territory, and shall be conducted in the same manner, and under the same regulations as prescribed by the laws of the said territory, regulating elections therein for the members of the house of representatives.

SEC. 5. *And be it further enacted*, That the members of the convention, thus duly elected, be, and they are hereby authorized to meet, at the town of Huntsville, on the first Monday in July next; which convention, when met, shall first determine, by a majority of the whole number elected, whether it be, or be not, expedient, at that time, to form a constitution and state government for the people within the said territory; and, if it be determined to be expedient, the convention shall be, and hereby are, authorized to form a constitution and state government; *Provided*, that the same, when formed, shall be republican, and not repugnant to the principles of the ordinance of the thirteenth of July, one thousand seven hundred and eighty-seven, between the people and states of the territory northwest of the river Ohio, so far as the same has been extended to the said territory, by the articles of agreement between the United states and the State of Georgia, or of the constitution of the United States.

SEC. 6. *And be it further enacted*, That the following propositions be, and the same are hereby offered to the convention of the said territory of Alabama, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States:

First. That the section numbered sixteen in every township, and when such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such townships for the use of schools.

Second. That all salt springs within the said territory, and the lands reserved for the use of the same, together with such other lands as may, by the president of the United States, be deemed necessary and proper for working the said salt springs, not exceeding in the whole the quantity contained in thirty-six entire sections, shall be granted to the said state, for the use of the people of the said state, the same to be used, under such terms, conditions, and regulations, as the legislature of the said state shall direct; *Pro-*

vided, the said legislature shall never sell nor lease the same for a longer term than ten years at any one time.

Third. That five per cent. of the net proceeds of the lands lying within the said territory, and which shall be sold by congress, from and after the first day of September, in the year one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for making public roads, canals, and improving the navigation of rivers, of which three-fifths shall be applied to those objects within the said state, under the direction of the legislature thereof, and two-fifths to the making of a road or roads leading to the said state, under the direction of congress.

Fourth. That thirty-six sections, or one entire township, to be designated by the secretary of the treasury, under the direction of the president of the United States, together with the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of the said state to be appropriated solely to the use of such seminary by the said legislature. And the secretary of the treasury, under the direction as aforesaid, may reserve the seventy-two sections, or two townships, hereby set apart for the support of a seminary of learning, in small tracts; *Provided*, that no tract shall consist of less than two sections; *And provided, always*, that the said convention shall provide, by an ordinance irrevocable without the consent of the United States, that the people inhabiting the said territory, do agree and declare that they forever disclaim all right and title to the waste or unappropriated lands lying within the said territory; and that the same shall be and remain at the sole and entire disposition of the United States (and, moreover, that each and every tract of land sold by the United States, after the first day of September, in the year one thousand eight hundred and nineteen, shall be and remain exempt from any tax laid by the order, or under the authority, of the state, whether for state, county, township, parish, or any other purpose whatever, for the term of five years, from and after the respective days of the sales thereof);* and that the lands belonging to the citizens of the United States, residing without the said state, shall never be taxed higher than the lands belonging to persons residing therein; and that no tax shall be imposed on lands, the property of the United States; and that all navigable waters within the said state shall forever remain public highways, free to the citizens of said state, and of the United States, without any tax, duty, impost, or toll therefor, imposed by the said state.

SEC. 7. *And be it further enacted*, That in lieu of a section of land, provided to be reserved for the seat of government of the said territory, by an act entitled "An act respecting the surveying and sale of the public lands in the Alabama territory," there be granted to the said state, for the seat of government thereof, a tract of land containing sixteen hundred and twenty acres, and consisting of sundry fractions and a quarter-section, in sections thirty-one and thirty-two, in township sixteen, and range ten, and in sections five and six, in township fifteen, and range ten, and in sections twenty-nine and thirty, in the same township and range, lying on both sides of the Alabama and Cahawba rivers, and including the mouth of the river Cahawba, and, which heretofore has been reserved from public sale, by order of the president of the United States.

SEC. 8. *And be it further enacted*, That, until the next general census shall be taken, the said state shall be entitled to one representative in the house of representatives of the United States.

SEC. 9. *And be it further enacted*, That in case the said convention shall form a constitution and state government for the people of the Territory of Alabama, the said convention, as soon thereafter as may be, shall cause a true and attested copy of such constitution or frame of government as shall be formed or provided, to be transmitted to congress for its approbation.

Approved, March 2, 1819.

(3 U. S. Stats. at Large, 489.)

*This part of the proviso was repealed by the act of congress of January 26, 1847.

RESOLUTION

Declaring the admission of the State of Alabama into the Union.

WHEREAS, in pursuance of an act of congress, passed on the second day of March, one thousand eight hundred and nineteen, entitled "An act to enable the people of the Alabama territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states," the people of the said territory did, on the second day of August, in the present year, by a convention called for that purpose, form for themselves a constitution and state government, which constitution and state government, so formed, is republican, and in conformity to the principles of the articles of compact between the original states and the people and states in the territory northwest of the river Ohio, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, so far as the same have been extended to the said territory by the articles of agreement between the United States and the State of Georgia:

Resolved by the senate and house of representatives of the United States of America in congress assembled, That the State of Alabama shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever.

Approved December 14, 1819.

(3 U. S. Stats. at Large, 608.)

RECONSTRUCTION ACTS.

AN ACT

To provide for the more efficient government of the rebel states.

WHEREAS, no legal state governments or adequate protection for life or property now exists in the rebel states of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas and Arkansas; And whereas, it is necessary that peace and good order should be enforced in said states until loyal and republican state governments can be legally established; Therefore—

Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That said rebel states shall be divided into military districts and made subject to the military authority of the United States as hereinafter prescribed; and for that purpose Virginia shall constitute the first district; North Carolina and South Carolina the second district; Georgia, Alabama and Florida the third district; Mississippi and Arkansas the fourth district; and Louisiana and Texas the fifth district.

SEC. 2. *And be it further enacted*, That it shall be the duty of the president to assign to the command of each of said districts an officer of the army not below the rank of brigadier-general, and to detail a sufficient military force to enable such officer to perform his duties and enforce his authority within the district to which he is assigned.

SEC. 3. *And be it further enacted*, That it shall be the duty of each officer assigned as aforesaid to protect all persons in their rights of person and property, to suppress insurrection, disorder, and violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals, and to this end he may allow local civil tribunals to take jurisdiction of and try

offenders, or, when in his judgment it may be necessary for the trial of offenders, he shall have power to organize military commissions or tribunals for that purpose, and all interference, under color of state authority, with the exercise of military authority under this act, shall be null and void.

SEC. 4. *And be it further enacted*, That all persons put under military arrest by virtue of this act shall be tried without unnecessary delay, and no cruel or unusual punishment shall be inflicted; and no sentence of any military commission or tribunal hereby authorized, affecting the life or liberty of any person, shall be executed until it is approved by the officer in command of the district, and the laws and regulations for the government of the army shall not be affected by this act, except in so far as they conflict with its provisions; *Provided*, That no sentence of death, under the provisions of this act, shall be carried into effect without the approval of the president.

SEC. 5. *And be it further enacted*, That when the people of any one of said rebel states shall have formed a constitution of government in conformity with the constitution of the United States in all respects, framed by a convention of delegates elected by the male citizens of said state twenty-one years old and upwards, of whatever race, color, or previous condition, who have been resident in said state for one year previous to the day of such election, except such as may be disfranchised for participation in the rebellion, or for felony at common law; and when such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates; and when such constitution shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates; and when such constitution shall have been submitted to congress for examination and approval, and congress shall have approved the same; and when said state, by a vote of its legislature elected under said constitution, shall have adopted the amendment to the constitution of the United States proposed by the thirty-ninth congress, and known as article fourteen; and when said article shall have become a part of the constitution of the United states, said state shall be declared entitled to representation in congress, and senators and representatives shall be admitted therefrom on their taking the oath prescribed by law; and then and thereafter the preceding sections of this act shall be inoperative in said state; *Provided*, that no person excluded from the privilege of holding office by said proposed amendment to the constitution of the United States shall be eligible to election as a member of the convention to frame a constitution for any of said rebel states, nor shall any such person vote for members of such convention.

SEC. 6. *And be it further enacted*, That until the people of said rebel states shall be by law admitted to representation in the congress of the United States, any civil government which may exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, modify, control, or supersede the same; and in all elections to any office under such provisional governments all persons shall be entitled to vote, and none others, who are entitled to vote under the fifth section of this act; and no person shall be eligible to any office under any such provisional governments who would be disqualified from holding office under the provisions of the third article of said constitutional amendment.

SCHUYLER COLFAX,
Speaker of the House of Representatives.
LA FAYETTE S. FOSTER,
President of the Senate pro tempore.

IN THE HOUSE OF REPRESENTATIVES,
March 2, 1867.

The president of the United States having returned to the house of representatives, in which it originated, the bill entitled "An act to provide for the more efficient government of the rebel states," with his objections thereto, the house of representatives proceeded, in pursuance of the constitution, to reconsider the same, and

Resolved, That the said bill do pass, two-thirds of the house of representatives agreeing to pass the same.

Attest: EDWARD McPHERSON,
Clerk H. R. U. S.

IN SENATE OF THE UNITED STATES,
March 2, 1867.

The senate having proceeded, in pursuance of the constitution, to reconsider the bill entitled "An act to provide for the more efficient government of the rebel states," returned to the house of representatives by the president of the United States with his objections, and sent by the house of representatives to the senate with the message of the president returning the bill,

Resolved, That the bill do pass, two-thirds of the senate agreeing to pass the same.

Attest: J. W. FORNEY,
March 2, 1867. *Secretary of the Senate.*

(14 U. S. Stats. at Large, 428.)

AN ACT

Supplementary to an act entitled "An act to provide for the more efficient government of the rebel states," passed March second, eighteen hundred and sixty-seven, and to facilitate restoration.

Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That before the first day of September, eighteen hundred and sixty-seven, the commanding general in each district defined by an act entitled "An act to provide for the more efficient government of the rebel states," passed March second, eighteen hundred and sixty-seven, shall cause a registration to be made of the male citizens of the United States, twenty-one years of age and upwards, resident in each county or parish in the state or states included in his district, which registration shall include only those persons who are qualified to vote for delegates by the act aforesaid, and who shall have taken and subscribed the following oath or affirmation: "I, —— ——, do solemnly swear (or affirm), in the presence of Almighty God, that I am a citizen of the state of ———; that I have resided in said state for ——— months next preceding this day, and now reside in the county of ———, or the parish of ———, in said state (as the case may be); that I am twenty-one years old; that I have not been disfranchised for participation in any rebellion or civil war against the United States, nor for felony committed against the laws of any state or of the United States; that I have never been a member of any state legislature, nor held any executive or judicial office in any state and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I have never taken an oath as a member of congress of the United States, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, and afterwards

engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I will faithfully support the constitution and obey the laws of the United States, and will, to the best of my ability, encourage others so to do—So help me God;" which oath or affirmation may be administered by any registering officer.

SEC. 2. *And be it further enacted*, That after the completion of the registration hereby provided for in any state, at such time and places therein as the commanding general shall appoint and direct, of which at least thirty days' public notice shall be given, an election shall be held of delegates to a convention for the purpose of establishing a constitution and civil government for such state loyal to the Union, said convention in each state, except Virginia, to consist of the same number of members as the most numerous branch of the state legislature of such state in the year eighteen hundred and sixty, to be apportioned among the several districts, counties, or parishes of such state by the commanding general, giving to each representation in the ratio of voters registered as aforesaid as nearly as may be. The convention in Virginia shall consist of the same number of members as represented the territory now constituting Virginia in the most numerous branch of the legislature of said state in the year eighteen hundred and sixty, to be apportioned as aforesaid.

SEC. 3. *And be it further enacted*, That at said election the registered voters of each state shall vote for or against a convention to form a constitution therefor under this act. Those voting in favor of such a convention shall have written or printed on the ballots by which they vote for delegates, as aforesaid, the words "For a convention," and those voting against such a convention shall have written or printed on such ballots the words "Against a convention." The persons appointed to superintend said election, and to make return of the votes given thereat, as herein provided, shall count and make return of the votes given for and against a convention; and the commanding general to whom the same shall have been returned shall ascertain and declare the total vote in each state for and against a convention. If a majority of the votes given on that question shall be for a convention, then such convention shall be held as hereinafter provided; but if a majority of said votes shall be against a convention, then no such convention shall be held under this act; *Provided*, that such convention shall not be held unless a majority of all such registered voters shall have voted on the questions of holding such convention.

SEC. 4. *And be it further enacted*, That the commanding general of each district shall appoint as many boards of registration as may be necessary, consisting of three loyal officers or persons, to make and complete the registration, superintend the election, and make return to him of the votes, list of voters, and of the persons elected as delegates by a plurality of the votes cast at said election; and upon receiving said returns he shall open the same, ascertain the persons elected as delegates, according to the returns of the officers who conducted said election, and make proclamation thereof; and if a majority of the votes given on that question shall be for a convention, the commanding general, within sixty days from the date of election, shall notify the delegates to assemble in convention, at a time and place to be mentioned in the notification, and said convention, when organized, shall proceed to frame a constitution and civil government according to the provisions of this act, and the act to which it is supplementary; and when the same shall have been so framed, said constitution shall be submitted by the convention for ratification to the persons registered under the provisions of this act at an election to be conducted by the officers or persons appointed, or to be appointed by the commanding general, as hereinbefore provided, and to be held after the expiration of thirty days from the date of notice thereof, to be given by said convention; and the returns thereof shall be made to the commanding general of the district.

SEC. 5. *And be it further enacted*, That if, according to said returns, the

constitution shall be ratified by a majority of the votes of the registered electors qualified as herein specified, cast at said election, at least one-half of all the registered voters voting upon the question of such ratification, the president of the convention shall transmit a copy of the same, duly certified, to the president of the United States, who shall forthwith transmit the same to congress, if then in session, and if not in session, then immediately upon its next assembling; and if it shall moreover appear to congress that the election was one at which all the registered and qualified electors in the state had an opportunity to vote freely, and without restraint, fear, or the influence of fraud, and if the congress shall be satisfied that such constitution meets the approval of a majority of all the qualified electors in the state, and if the said constitution shall be declared by congress to be in conformity with the provisions of the act to which this is supplementary, and the other provisions of said act shall have been complied with, and the said constitution shall be approved by congress, the state shall be declared entitled to representation, and senators and representatives shall be admitted therefrom as therein provided.

SEC. 6. *And be it further enacted*, That all elections in the states mentioned in the said "Act to provide for the more efficient government of the rebel states," shall, during the operation of said act, be by ballot; and all officers making the said registration of voters, and conducting said elections, shall, before entering upon the discharge of their duties, take and subscribe the oath prescribed by the act approved July second, eighteen hundred and sixty-two, entitled "An act to prescribe an oath of office"; *Provided*, that if any person shall knowingly and falsely take and subscribe any oath in this act prescribed, such person so offending, and being thereof duly convicted, shall be subject to the pains, penalties, and disabilities, which by law are provided for the punishment of the crime of willful and corrupt perjury.

SEC. 7. *And be it further enacted*, That all expenses incurred by the several commanding generals, or by virtue of any orders issued, or appointments made by them, under or by virtue of this act, shall be paid out of any moneys in the treasury not otherwise appropriated.

SEC. 8. *And be it further enacted*, That the convention for each State shall prescribe the fees, salary, and compensation to be paid to all delegates and other officers and agents herein authorized or necessary to carry into effect the purposes of this act, not herein otherwise provided for, and shall provide for the levy and collection of such taxes on the property in such state as may be necessary to pay the same.

SEC. 9. *And be it further enacted*, That the word "article," in the sixth section of the act to which this is supplementary, shall be construed to mean "section."

SCHUYLER COLFAX,
Speaker of the House of Representatives.
B. F. WADE,
President of the Senate pro tempore.

IN THE HOUSE OF REPRESENTATIVES, U. S., March 23, 1867.

The president of the United States having returned to the house of representatives, in which it originated, the bill entitled "An act supplementary to an act entitled 'An act to provide for the more efficient government of the rebel states,' passed March second, eighteen hundred and sixty-seven, and to facilitate restoration," with his objections thereto, the house of representatives proceeded, in pursuance of the constitution, to reconsider the same; and—

Resolved, That the said bill do pass, two-thirds of the house of representatives agreeing to pass the same.

Attest:

EDWD. McPHERSON,
Clerk H. R. U. S.

IN SENATE OF THE UNITED STATES,
March 23, 1867.

The senate having proceeded, in pursuance of the constitution, to reconsider the bill entitled "An act supplementary to an act entitled 'An act to provide for the more efficient government of the rebel states,' passed March second, eighteen hundred and sixty-seven, and to facilitate restoration," returned to the house of representatives by the president of the United States, with his objections, and sent by the house of representatives to the senate, with the message of the president returning the bill—

Resolved, That the bill do pass, two-thirds of the senate agreeing to pass the same.

Attest:
March 23, 1867.

J. W. FORNEY,
Secretary.

(15 U. S. Stats. at Large, 2.)

ACTS OF CONGRESS.

AN ACT

To authorize the legislature of the State of Alabama to sell the lands heretofore appropriated for the use of schools in that state.

SECTION 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That the legislature of the State of Alabama shall be and is hereby authorized to sell and convey, in fee simple, all or any part of the lands heretofore reserved and appropriated by congress for the use of schools within said state, and to invest the money arising from the sale thereof in some productive fund, the proceeds of which shall be forever applied, under the direction of said legislature, for the use and support of schools within the several townships and districts of country for which they were originally reserved and set apart, and for no other use or purpose whatsoever; *Provided*, said land, or any part thereof, shall in no case be sold without the consent of the inhabitants of such township or district, to be obtained in such manner as the legislature of said state shall by law direct; *And provided also*, that in the apportionment of the proceeds of said fund each township and district aforesaid shall be entitled to such part thereof, and no more, as shall have accrued from the sum or sums of money arising from the sale of the school lands belonging to such township or district.

SEC. 2. *And be it further enacted*, That if the proceeds accruing to any township or district from said fund shall be insufficient for the support of schools therein, it shall be lawful for said legislature to invest the same as is hereinbefore directed, until the whole proceeds of the fund belonging to such township or district shall be adequate to the permanent maintenance and support of schools within the same.

Approved March 2, 1827.

(4 U. S. Stats. at Large, 237.)

AN ACT

To carry into effect, in the states of Alabama and Mississippi, the existing compacts with those states in regard to the five per cent. fund and the school reservations.

SECTION 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That a sum equivalent to five per cent. of the net proceeds of the lands within the State of Mississippi, ceded

by the Chickasaws by the treaty of the twentieth of October, eighteen hundred and thirty-two, which have been or may hereafter be sold by congress, shall be and is hereby reserved out of any money in the treasury not otherwise appropriated, to be applied in the same manner, and for the same uses and purposes as is designated by the fifth section of the act of congress of the first of March, eighteen hundred and seventeen.

SEC. 2. *And be it further enacted*, That there shall be reserved from sale in the State of Mississippi a quantity of land equal to one thirty-sixth part of the lands ceded by said Chickasaws as aforesaid, within said State of Mississippi, which lands shall be selected under the direction of the secretary of the treasury, in sections, or half-sections, or quarter-sections, out of any public lands remaining unsold, that shall have been offered at public sale within either of the land districts in said State of Mississippi contiguous to said lands within said state, so ceded by the Chickasaws as aforesaid, which lands, when so selected as aforesaid, the same shall vest in the State of Mississippi, for the use of schools within said territory in said state, so ceded as aforesaid by the Chickasaws; and such lands, thus selected, shall be holden by the same tenure, and upon the same terms and conditions, in all respects, as the said state now holds the lands heretofore reserved for the use of schools in said state.

SEC. 3. *And be it further enacted*, That a sum equivalent to five per cent. of the net proceeds of the lands within the State of Alabama, ceded by the Chickasaws by the treaty aforesaid, which have been or may hereafter be sold by congress, shall be, and is hereby reserved out of any moneys in the treasury not otherwise appropriated, to be applied in the same manner, and for the same uses and purposes as is designated by the sixth section of the act of congress of the second of March, eighteen hundred and nineteen.

SEC. 4. *And be it further enacted*, That there shall be reserved from sale in the State of Alabama a quantity of land equal to one thirty-sixth part of the lands ceded by the Chickasaws as aforesaid, within said State of Alabama, which land shall be selected under the direction of the secretary of the treasury, in sections, or half-sections, or quarter-sections, out of any public lands remaining unsold, that shall have been offered at public sale within any land district in said State of Alabama contiguous to said lands within said state so ceded by the Chickasaws as aforesaid, which lands, when so selected as aforesaid, the same shall vest in the State of Alabama for the use of schools within said territory in said state, so ceded as aforesaid by the Chickasaws; and said lands thus selected shall be holden by the same tenure, and upon the same terms and conditions, in all respects, as the said state now holds the lands heretofore reserved for the use of schools in said state.

Approved July 4, 1836.

(5 U. S. Stats. at Large, 727.)

AN ACT

Authorizing the settlement and payment of certain claims of the State of Alabama.

SECTION 1. *Be it enacted by the senate and house of representatives of the United States of America in congress assembled*, That the secretary of war be and hereby is directed to audit and adjust the claims of the State of Alabama, under such laws and regulations as have heretofore governed the department in auditing and allowing the claims of the states on the United States, for moneys advanced and paid by said state for subsistence, supplies, and services of local troops called into service by and under the authorities of said state, but not mustered into the service of the United States, and for provisions and forage furnished the friendly Indians during the Creek and Seminole hostilities, in the years eighteen hundred and thirty-six and eighteen hundred and thirty-seven, in all cases in which the payment was for subsist-

ence, supplies, service, provisions, and forage, which would have been paid for under existing laws and regulations, if such troops had been mustered into the service of the United States, and the provision and forage had been furnished by an agent of the United States; and that the sum so found due to said state be paid out of any money in the treasury not otherwise appropriated; *Provided*, that in auditing and adjusting said claims, duly authenticated copies of papers which have been lost or destroyed, upon due proof of such loss or destruction, shall be received as evidence.

SEC. 2. *And be it further enacted*, That the secretary of war be, and he hereby is required to report to the house of representatives a schedule of such claims as may be presented for adjustment under this act, and not allowed, with the reasons for such disallowance, at the next session of congress.

Approved August 16, 1842.

(5 U. S. Stats. at Large, 506.)

AN ACT

To authorize the State of Alabama to apply certain lands heretofore granted to that state for internal improvements, for the use of schools, in the valueless sixteenth sections in said state.

Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That the lands granted to the State of Alabama for purposes of internal improvement, by the eighth section of the act entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved September fourth, eighteen hundred and forty-one, may be, and the same are hereby placed at the disposal of the legislature of said state, at such price as said legislature may direct, to be applied for the use of schools in such townships of said state as in which the sixteenth or school sections are comparatively valueless, and the legislature may locate said lands in any legal subdivisions, not less than forty acres, within the limits of said state.

Approved August 11, 1848.

(9 U. S. Stats. at Large, 281.)

AN ACT

Declaring the assent of congress to certain states to impose a tax upon all lands hereafter sold by the United States therein, from and after the date of such sale.

Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That the assent of congress is hereby given to the several states admitted into the Union prior to the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and twenty, to impose a tax or taxes on lands hereafter to be sold by the United States, in said state, from and after the day of such sale; *Provided*, that the assent hereby given shall in nowise impair that provision of the compact with the said states which declares that all lands belonging to citizens of the United States residing without the said states, shall never be taxed higher than lands belonging to persons residing therein.

Approved January 26, 1847.

(9 U. S. Stats. at Large, 118.)

CONSTITUTION OF THE STATE OF ALABAMA.
1819.*

WE, the people of the Alabama Territory, having the right of admission into the general government as a member of the Union, consistent with the Constitution and laws of the United States, by our representatives, assembled in convention at the town of Huntsville, on Monday, the fifth day of July, one thousand eight hundred and nineteen, in pursuance of an act of congress, entitled "An act to enable the people of the Alabama Territory to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states"; in order to establish justice, ensure tranquillity, provide for the common defense, promote the general welfare, and secure to ourselves and our posterity the rights of life, liberty, and property, do ordain and establish the following Constitution or form of government; and do mutually agree with each other to form ourselves into a free and independent state, by the name of "The State of Alabama." And we do hereby recognize, confirm, and establish the boundaries assigned to said State by the act of congress aforesaid—"to wit: Beginning at the point where the thirty-first degree of north latitude intersects the Perdido river, thence, east, to the western boundary line of the State of Georgia; thence, along said line, to the southern boundary line of the State of Tennessee; thence, west, along said boundary line, to the Tennessee river; thence, up the same to the mouth of Bear creek; thence, by a direct line, to the northwest corner of Washington county; thence, due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence, up the same to the beginning"—subject to such alteration as is provided in the third section of said act of congress, and subject to such enlargement as may be made by law, in consequence of any cession of territory by the United States, or either of them.

ARTICLE 1.

DECLARATION OF RIGHTS.

That the general, great, and essential principles of liberty and free government may be recognized and established, we declare:

§1. That all freemen, when they form a social compact, are equal in rights; and that no man or set of men are entitled to exclusive, separate public emoluments or privileges, but in consideration of public services.

§2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit: and, therefore, they have at all times an unalienable and indefeasible right to alter, reform, or abolish their form of government, in such manner as they may think expedient.

§3. No person within this State shall, upon any pretence, be deprived of the inestimable privilege of worshipping God in the manner most agreeable to his own conscience; nor be compelled to attend any place of worship; nor shall any one ever be obliged to pay any tithes, taxes, or other rate, for the building or repairing any place of worship, or for the maintenance of any minister or ministry.

§4. No human authority ought, in any case whatever, to control or interfere with the rights of conscience.

*The parts in brackets have been modified by the amendments.

§5. No person shall be hurt, molested, or restrained, in his religious profession, sentiments, or persuasions, provided he does not disturb others in their religious worship.

§6. The civil rights, privileges, or capacities of any citizen, shall in no way be diminished or enlarged, on account of his religious principles.

§7. There shall be no establishment of religion by law; no preference shall ever be given by law to any religious sect, society, denomination, or mode of worship; and no religious tests shall ever be required as a qualification to any office or public trust under this State.

§8. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

§9. The people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures or searches; and no warrant to search any place, or to seize any person or thing, shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

§10. In all criminal prosecutions, the accused has a right to be heard by himself and counsel; to demand the nature and cause of the accusation, and have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and, in all prosecutions, by indictment or information, a speedy public trial by an impartial jury of the county or district in which the offense shall have been committed; he shall not be compelled to give evidence against himself, nor shall he be deprived of his life, liberty, or property, but by due course of law.

§11. No person shall be accused, arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished, but in virtue of a law, established and promulgated prior to the offense, and legally applied.

§12. No person shall, for any indictable offense, be proceeded against criminally, by information; except in cases arising in the land and naval forces, or the militia when in actual service, or, by leave of the court, for oppression and misdemeanor in office.

§13. No person shall, for the same offense, be twice put in jeopardy of life or limb; nor shall any person's property be taken or applied to public use, unless just compensation is made therefor.

§14. All courts shall be open, and every person, for an injury done him, in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered, without sale, denial, or delay.

§15. No power of suspending laws shall be exercised, except by the general assembly, or its authority.

§16. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishment inflicted.

§17. All persons shall, before conviction, be bailable by sufficient securities, except for capital offenses, when the proof is evident, or the presumption great; and the privilege of the writ of "habeas corpus" shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

§18. The person of a debtor, where there is not strong presumption of fraud, shall not be detained in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

§19. No ex post facto law, nor law impairing the obligation of contracts shall be made.

§20. No person shall be attainted of treason or felony by the general assembly. No attainder shall work corruption of blood, nor forfeiture of estate.

§21. The estates of suicides shall descend or vest as in cases of natural death; if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

§22. The citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

§23. Every citizen has a right to bear arms in defense of himself and the state.

§24. No standing army shall be kept up without the consent of the general assembly; and, in that case, no appropriation of money for its support shall be for a longer term than one year, and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

§25. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

§26. No title of nobility, or hereditary distinction, privilege, honor, or emolument, shall ever be granted or conferred in this State; nor shall any office be created, the appointment of which shall be for a longer term than during good behavior.

§27. Emigration from this State shall not be prohibited, nor shall any citizen be exiled.

§28. The right of trial by jury shall remain inviolate.

§29. No person shall be debarred from prosecuting or defending any civil cause, for or against him or herself, before any tribunal in this State, by him or herself, or counsel.

§30. This enumeration of certain rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights herein retained, or any transgression of any of the high powers herein delegated, we declare, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or to the following provisions, shall be void.

ARTICLE II.

DISTRIBUTION OF POWERS.

§1. The powers of the government of the State of Alabama shall be divided into three distinct departments; and each of them confided to a separate body of magistracy, to wit: Those which are legislative to one; those which are executive to another; and those which are judicial to another.

§2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

§1. The legislative power of this state shall be vested in two distinct branches; the one to be styled the senate, the other the house of representatives, and both together "The General Assembly of the State of Alabama"; and the style of their laws shall be, "Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened."

§2. The members of the house of representatives shall be chosen by the qualified electors, and shall serve for the term of [one year] from the day of the commencement of the general election, and no longer.

§3. The representatives shall be chosen [every year] on the first Monday and the day following in August, until otherwise directed by law.

§4. No person shall be a representative, unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof a resident

of the county, city, or town, for which he shall be chosen, and shall have attained the age of twenty-one years.

§5. Every white male person of the age of twenty-one years, or upwards, who shall be a citizen of the United States, and shall have resided in this state one year next preceding an election, and the last three months within the county, city, or town, in which he offers to vote, shall be deemed a qualified elector; *Provided*, that no soldier, seaman, or marine, in the regular army or navy of the United States, shall be entitled to vote at any election in this state; *And provided also*, that no elector shall be entitled to vote except in the county, city, or town (entitled to separate representation) in which he may reside at the time of the election.

§6. Electors shall, in all cases except in those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from the same.

§7. In all elections by the people, the electors shall vote by ballot, until the general assembly shall otherwise direct.

§8. Elections for representatives for the several counties shall be held at the place of holding their respective courts, and at such other places as may be prescribed by law; *Provided*, that when it shall appear to the general assembly that any city or town shall have a number of white inhabitants equal to the ratio then fixed, such city or town shall have a separate representation, according to the number of white inhabitants therein; which shall be retained so long as such city or town shall contain a number of white inhabitants equal to the ratio which may from time to time be fixed by law; and thereafter, and during the existence of the right of separate representation, in such city or town, elections for the county in which such city or town (entitled to such separate representation) is situated, shall not be held in such city or town; but it is understood, and hereby declared, that no city or town shall be entitled to separate representation, unless the number of white inhabitants in the county in which such city or town is situated, residing out of the limits of said city or town, be equal to the existing ratio; or unless the residuum or fraction of such city or town shall, when added to the white inhabitants of the county residing out of the limits of said city or town, be equal to the ratio fixed by law for one representative; *And provided*, that if the residuum or fraction of any city or town, entitled to separate representation, shall, when added to the residuum of the county in which it may lie, be equal to the ratio fixed by law for one representative, then the aforesaid county, city, or town, having the largest residuum, shall be entitled to such representation; *And provided also*, that when there are two or more counties adjoining, which have residuums or fractions over and above the ratio then fixed by law, if said residuums or fractions, when added together, will amount to such ratio, in that case one representative shall be added to that county having the largest residuum.

§9. The general assembly shall, at their first meeting, and in the years one thousand eight hundred and twenty, one thousand eight hundred and twenty-three, one thousand eight hundred and twenty-six, and every six years thereafter, cause an enumeration to be made of all the inhabitants of the state, and the whole number of the representatives shall, at the first session held after making every such enumeration, be fixed by the general assembly and apportioned among the several counties, cities, or towns, entitled to separate representation, according to their respective numbers of white inhabitants; and the said apportionment, when made, shall not be subject to alteration, until after the next census shall be taken. The house of representatives shall not consist of less than forty-four, nor more than sixty members, until the number of white inhabitants shall be one hundred thousand; and after that event, the whole number of representatives shall never be less than sixty, nor more than one hundred; *Provided*, *however*, that each county shall be entitled to at least one representative.

§10. The general assembly shall, at the first session after making every

such enumeration, fix by law the whole number of senators, and shall divide the state into the same number of districts, as nearly equal, in the number of white inhabitants, as may be, each of which districts shall be entitled to one senator and no more; *Provided*, that the whole number of senators shall never be less than one-fourth, nor more than one-third of the whole number of representatives.

§11. When a senatorial district shall be composed of two or more counties, the counties of which such district consists shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a district.

§12. Senators shall be chosen by the qualified electors, for the term of three years, at the same time, in the same manner, and at the same places, where they may vote for members of the house of representatives; and no person shall be a senator, unless he be a white man, a citizen of the United States, and shall have been an inhabitant of this state two years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and shall have attained to the age of twenty-seven years.

[§13. The senators chosen according to the apportionment under the census ordered to be taken in one thousand eight hundred and twenty-six, when convened, shall be divided by lot into three classes, as nearly equal as may be. The seats of the senators of the first class shall be vacated at the expiration of the first year, those of the second class at the expiration of the second year, and those of the third class at the expiration of the third year, so that one-third may be annually chosen thereafter, and a rotation thereby kept up perpetually. Such mode of classifying new additional senators shall be observed as will, as nearly as possible, preserve an equality of members in each class.]

§14. The house of representatives, when assembled, shall choose a speaker, and its other officers; and the senate shall [annually] choose a president, and its other officers; each house shall judge of the qualifications, elections, and returns, of its own members; but a contested election shall be determined in such manner as shall be directed by law.

§15. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

§16. Each house may determine the rules of its own proceedings, punish members for disorderly behaviour, and, with the consent of two-thirds, expel a member; but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state.

§17. Each house, during the session, may punish, by imprisonment, any person, not a member, for disrespectful or disorderly behaviour in its presence, or for obstructing any of its proceedings; *Provided*, That such imprisonment shall not, at any one time, exceed forty-eight hours.

§18. Each house shall keep a journal of its proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of any two members present, be entered on the journals. Any member of either house shall have liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons of his dissent entered on the journals.

§19. Senators and representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to and returning from the same; allowing one day for every twenty miles such member may reside from the place at which the general assembly is convened; nor shall any member be liable to answer

for anything spoken in debate in either house, in any court or place elsewhere.

§20. When vacancies happen in either house, the governor, or the person exercising the powers of the governor, shall issue writs of election to fill such vacancies.

§21. The doors of each house shall be open, except on such occasions as, in the opinion of the house, may require secrecy.

§22. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

§23. Bills may originate in either house, and be amended, altered, or rejected by the other; but no bill shall have the force of a law, until on three several days it be read in each house, and free discussion be allowed thereon, unless, in case of urgency, four-fifths of the house in which the bill shall be depending may deem it expedient to dispense with this rule; and every bill, having passed both houses, shall be signed by the speaker and the president of their respective houses; *Provided*, that all bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject them as other bills.

§24. Each member of the general assembly shall receive from the public treasury such compensation for his services as may be fixed by law; but no increase of compensation shall take effect during the session at which such increase shall have been made.

§25. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by elections by the people.

§26. No person holding any lucrative office under the United States (the office of postmaster excepted), this State, or any other power, shall be eligible to the general assembly; *Provided*, that offices in the militia, to which there is attached no annual salary, or the office of justice of the peace, or that of the quorum, or county court, while it has no salary, shall not be deemed lucrative.

§27. No person who may hereafter be a collector or holder of public moneys, shall have a seat in either house of the general assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

§28. The first election for senators and representatives shall be general throughout the State; and shall be held on the third Monday and Tuesday in September next.

[§29. The first session of the general assembly shall commence on the fourth Monday in October next, and be held at the town of Huntsville, and all subsequent sessions at the town of Cahawba, until the end of the first session of the general assembly, to be held in the year one thousand eight hundred and twenty-five; during that session the general assembly shall have power to designate by law (to which the executive concurrence shall not be required) the permanent seat of government, which shall not thereafter be changed; *Provided, however*, that unless such designation be then made by law, the government shall continue permanently at the town of Cahawba; *And provided also*, that the general assembly shall make no appropriations previous to the year one thousand eight hundred and twenty-five, for the building of any other state-house than that now provided for by law.]

ARTICLE IV.

EXECUTIVE DEPARTMENT.

§1. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled the "Governor of the State of Alabama."

§2. The governor shall be elected by the qualified electors at the time and places when they shall respectively vote for representatives.

§3. The returns of every election for governor shall be sealed up, and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall, during the first week of the session, open and publish them in the presence of both houses of the general assembly. The person having the highest number of votes shall be governor, but if two or more shall be equal and highest in votes, one of them shall be chosen governor by the joint vote of both houses. Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law.

§4. The governor shall hold his office for the term of two years from the time of his installation, and until his successor shall be duly qualified, but shall not be eligible for more than four years in any term of six years; he shall be at least thirty years of age, shall be a native citizen of the United States, and shall have resided in this State at least four years next preceding the day of his election.

§5. He shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected.

§6. He shall be commander-in-chief of the army and navy of this State, and of the militia thereof, except when they shall be called into the service of the United States. And when acting in the service of the United States, the general assembly shall fix his rank.

§7. He may require information in writing from the officers of the executive department, on any subject relating to the duties of their respective offices.

§8. He may, by proclamation, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; in case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next [annual] meeting of the general assembly.

§9. He shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

§10. He shall take care that the laws be faithfully executed.

§11. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In cases of treason he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons; and he may, in the recess of the senate, respite the sentence until the end of the next session of the general assembly.

§12. There shall be a seal of this State, which shall be kept by the governor, and used by him officially, and the present seal of the territory shall be the seal of the State, until otherwise directed by the general assembly.

§13. All commissions shall be in the name and by the authority of the State of Alabama, be sealed with the state seal, signed by the governor, and attested by the secretary of state.

§14. There shall be a secretary of state, appointed by joint vote of both houses of the general assembly, who shall continue in office during the term of two years. He shall keep a fair register of all official acts and proceedings of the governor, and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before the general assembly; and shall perform such other duties as may be required of him by law.

§15. Vacancies that may happen in offices, the appointment to which is vested in the general assembly, shall be filled by the governor, during the

recess of the general assembly, by granting commissions which shall expire at the end of the next session.

§16. Every bill which shall have passed both houses of the general assembly shall be presented to the governor; if he approve he shall sign it, but if not, he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large upon the journals, and proceed to reconsider it; if after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered; if approved by a majority of the whole number elected to that house, it shall become a law; but in such cases the votes of both houses shall be determined by yeas and nays; and the names of the members voting for or against the bill shall be entered on the journals of each house respectively; if any bill shall not be returned by the governor within five days, Sundays excepted, after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return, in which case it shall not be a law.

§17. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except on questions of adjournment, shall be presented to the governor, and, before it shall take effect, be approved by him, or being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in the cases of a bill.

§18. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the State, the president of the senate shall exercise all the power and authority appertaining to the office of governor, until the time pointed out by this Constitution for the election of governor shall arrive, unless the general assembly shall provide by law for the election of a governor to fill such vacancy, or until the governor absent or impeached shall return or be acquitted.

§19. If, during the vacancy of the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the State, the speaker of the house of representatives shall, in like manner, administer the government.

§20. The president of the senate and speaker of the house of representatives, during the time they respectively administer the government, shall receive the same compensation which the governor would have received, had he been employed in the duties of his office.

§21. The governor shall always reside, during the session of the general assembly, at the place where their session may be held, and at all other times wherever, in their opinion, public good may require.

§22. No person shall hold the office of governor, and any other office or commission, civil or military, either in this State, or under any State, or the United States, or any other power, at one and the same time.

§23. A state treasurer and a comptroller of public accounts shall be annually elected, by a joint vote of both houses of the general assembly.

§24. A sheriff shall be elected in each county by the qualified electors thereof, who shall hold his office for the term of three years, unless sooner removed, and who shall not be eligible to serve either as principal or deputy for the three succeeding years. Should a vacancy occur subsequent to an election, it shall be filled by the governor, as in other cases, and the person so appointed shall continue in office until the next general election, when such vacancy shall be filled by the qualified electors, and the sheriff then elected shall continue in office for three years.

MILITIA.

§1. The general assembly shall provide by law for organizing and disciplining the militia of this State, in such manner as they shall deem expedient, not incompatible with the Constitution and laws of the United States in relation thereto.

§2. Any person, who conscientiously scruples to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service.

§3. The governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and to repel invasions.

§4. All officers of the militia shall be elected or appointed in such manner as may be prescribed by law; *Provided*, that the general assembly shall not make any such elections or appointments, other than those of adjutants-general, and quartermasters-general.

§5. The governor shall appoint his aides-de-camp; majors-general, their aides-de-camp, and all other division and staff officers; brigadiers-general shall appoint their aids, and all other brigade staff-officers; and colonels shall appoint their regimental staff-officers.

§6. The general assembly shall fix by law the method of dividing the militia into divisions, brigades, regiments, battalions, and companies, and shall fix the rank of all staff-officers.

ARTICLE V.

JUDICIAL DEPARTMENT.

§1. The judicial power of this State shall be vested in one supreme court, circuit courts to be held in each county in the State, and such inferior courts of law and equity, to consist of not more than five members, as the general assembly may, from time to time, direct, ordain and establish.

§2. The supreme court, except in cases otherwise directed by this Constitution, shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may, from time to time, be prescribed by law; *Provided*, that the supreme court shall have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions.

§3. Until the general assembly shall otherwise prescribe, the powers of the supreme court shall be vested in, and its duties shall be performed by, the judges of the several circuit courts within this State; and they, or a majority of them, shall hold such sessions of the supreme court, and at such times as may be directed by law; *Provided*, that no judge of the supreme court shall be appointed before the commencement of the first session of the general assembly, which shall be begun and held after the first day of January, in the year one thousand eight hundred and twenty-five.

§4. The supreme court shall be holden at the seat of government, but may adjourn to a different place, if that shall have become dangerous from an enemy, or from disease.

§5. The State shall be divided into convenient circuits, and each circuit shall contain not less than three, nor more than six counties; and for each circuit there shall be appointed a judge, who shall, after his appointment, reside in the circuit for which he may be appointed.

§6. The circuit court shall have original jurisdiction in all matters, civil and criminal, within this State, not otherwise excepted in this Constitution; but in civil cases, only when the matter or sum in controversy exceeds fifty dollars.

§7. A circuit court shall be held in each county in the State, at least twice in every year, and the judges of the several circuit courts may hold courts for each other, when they may deem it expedient, and shall do so when directed by law.

§8. The general assembly shall have power to establish a court or courts of chancery, with original and appellate equity jurisdiction; and until the establishment of such court or courts, the said jurisdiction shall be vested in the judges of the circuit courts respectively; *Provided*, that the judges of the

several circuit courts shall have power to issue writs of injunction, returnable into the courts of chancery.

§9. The general assembly shall have power to establish, in each county within this State, a court of probate, for the granting of letters testamentary and of administration, and for orphans' business.

§10. A competent number of justices of the peace shall be appointed in and for each county, in such mode and for such term of office as the general assembly may direct. Their jurisdiction in civil cases shall be limited to causes in which the amount in controversy shall not exceed fifty dollars. And in all cases tried by a justice of the peace, right of appeal shall be secured, under such rules and regulations as may be prescribed by law.

§11. Judges of the supreme and circuit courts, and courts of chancery, shall, at stated times, receive for their services a compensation, which shall be fixed by law, and shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under this State, the United States, or any other power.

§12. Chancellors, judges of the supreme court [judges of the circuit courts, and judges of the inferior courts] shall be elected by joint vote of both houses of the general assembly.

[§13. The judges of the several courts in this State shall hold their offices during good behavior; and for willful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment, the governor shall remove any of them, on the address of two-thirds of each house of the general assembly; *Provided, however*, that the cause or causes for which such removal shall be required, shall be stated at length in such address, and entered on the journals of each house; *And provided further*, that the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defense, before any vote for such address shall pass, and in all such cases the vote shall be taken by yeas and nays, and entered on the journals of each house respectively; *And provided also*, that the judges of the several circuit courts, who shall be appointed before the commencement of the first session of the general assembly, which shall be begun and held after the first day of January, in the year of our Lord one thousand eight hundred and twenty-five, shall only hold their offices during good behavior, until the end of the said session, at which time their commissions shall expire.]

§14. No person who shall have arrived at the age of seventy years shall be appointed to, or continue in, the office of judge in this State.

§15. Clerks of the circuit and inferior courts in this State shall be elected by the qualified electors in each county, for the term of four years, and may be removed from office for such causes and in such manner as may be prescribed by law; and should a vacancy occur, subsequent to an election, it shall be filled by the judge or judges of the court in which such vacancy exists; and the person so appointed shall hold his office until the next general election; *Provided, however*, that after the year one thousand eight hundred and twenty-six, the general assembly may prescribe a different mode of appointment, but shall not make such appointment.

§16. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the State; as also the judges of the circuit courts in their respective districts, and judges of the inferior courts in their respective counties.

§17. The style of all process shall be "The State of Alabama," and all prosecutions shall be carried on in the name and by the authority of the State of Alabama, and shall conclude "against the peace and dignity of the same."

§18. There shall be an attorney-general for the State, and as many solicitors as the general assembly may deem necessary, to be elected by a joint vote thereof, who shall hold their offices for the term of four years, and

shall receive for their services a compensation, which shall not be diminished during their continuance in office.

IMPEACHMENTS.

§1. The house of representatives shall have the sole power of impeaching.

§2. All impeachments shall be tried by the senate; when sitting for that purpose, the senators shall be on oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

§3. The governor and all civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than removal from office, and to disqualification to hold any office of honor, trust, or profit, under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, and punishment, according to law.

ARTICLE VI.

GENERAL PROVISIONS.

§1. The members of the general assembly, and all officers, executive and judicial, before they enter on the execution of their respective offices, shall take the following oath or affirmation, to wit: "I solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof, and that I will faithfully discharge, to the best of my abilities, the duties of ——, according to law—So help me God."

§2. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

§3. The general assembly shall have power to pass such penal laws to suppress the evil practice of dueling, extending to disqualification from office or the tenure thereof, as they may deem expedient.

§4. Every person shall be disqualified from holding any office or place of honor or profit, under the authority of the State, who shall be convicted of having given or offered any bribe to procure his election or appointment.

§5. Laws shall be made to exclude from office, from suffrage, and from serving as jurors, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon, from power, bribery, tumult, or other improper conduct.

§6. In all elections by the general assembly, the members thereof shall vote viva voce, and the votes shall be entered on the journals.

§7. No money shall be drawn from the treasury, but in consequence of an appropriation made by law; and a regular statement and account of the receipts and expenditures of all public moneys shall be published annually.

§8. All lands liable to taxation in this State, shall be taxed in proportion to their value.

§9. The general assembly shall direct, by law, in what manner, and in what courts, suits may be brought against the State.

§10. It shall be the duty of the general assembly to regulate, by law, the cases in which deductions shall be made from the salaries of public officers, for neglect of duty in their official capacities, and the amount of such deduction.

§11. Absence on business of this State, or of the United States, or on a visit, or necessary private business, shall not cause a forfeiture of a residence once obtained.

§12. No member of congress, nor any person holding any office of profit or trust under the United States (the office of postmaster excepted), or

either of them, or any foreign power, shall hold or exercise any office of profit under this State.

§13. Divorces from the bonds of matrimony shall not be granted but in cases provided for by law, by suit in chancery; and no decree for such divorce shall have effect, until the same shall be sanctioned by two-thirds of both houses of the general assembly.

§14. In prosecutions for the publishing of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the courts.

§15. Returns of all elections for officers, who are to be commissioned by the governor, and for members of the general assembly, shall be made to the secretary of state.

§16. No new county shall be established by the general assembly, which shall reduce the county or counties, or either of them, from which it shall be taken, to a less content than nine hundred square miles; nor shall any county be laid off of less contents. Every new county, as to the right of suffrage and representation, shall be considered as a part of the county or counties from which it was taken, until entitled by numbers to the right of separate representation.

§17. The general assembly shall, at their first session, which may be holden in the year eighteen hundred and twenty-eight, or at the next succeeding session, arrange and designate boundaries for the several counties within the limits of this state, to which the Indian title shall have been extinguished, in such manner as they may deem expedient, which boundaries shall not be afterward altered, unless by the agreement of two-thirds of both branches of the general assembly; and in all cases of ceded territory acquired by the State, the general assembly may make such arrangements and designations of the boundaries of counties within such ceded territory, as they may deem expedient, which only shall be altered in like manner; *Provided*, that no county hereafter to be formed, shall be of less extent than nine hundred square miles.

§18. It shall be the duty of the general assembly to pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by the parties, who may choose that summary mode of adjustment.

§19. It shall be the duty of the general assembly, as soon as circumstances will permit, to form a penal code, founded on principles of reformation, and not of vindictive justice.

§20. Within five years after the adoption of this Constitution, the body of our laws, civil and criminal, shall be revised, digested, and arranged under proper heads, and promulgated in such manner as the general assembly may direct; and a like revision, digest, and promulgation, shall be made within every subsequent period of ten years.

§21. The general assembly shall make provisions by law for obtaining correct knowledge of the several objects proper for improvement in relation to the navigable waters, and to the roads in this State, and for making a systematic and economical application of the means appropriated to those objects.

§22. In the event of the annexation of any foreign territory to this State, by a cession from the United States, laws may be passed, extending to the inhabitants of such territory all the rights and privileges which may be required by the terms of such cession; anything in this Constitution to the contrary notwithstanding.

EDUCATION.

Schools, and the means of education, shall forever be encouraged in this State; and the general assembly shall take measures to preserve, from unnecessary waste and damage such lands as are or hereafter may be granted

by the United States for the use of schools within each township in this State, and apply the funds, which may be raised from such lands, in strict conformity to the object of such grant. The general assembly shall take like measures for the improvement of such lands as have been or may be hereafter granted by the United States to this State, for the support of a seminary of learning, and the moneys which may be raised from such lands by rent, lease, or sale, or from any other quarter, for the purpose aforesaid, shall be and remain a fund for the exclusive support of a State University, for the promotion of the arts, literature, and the sciences; and it shall be the duty of the general assembly, as early as may be, to provide effectual means for the improvement and permanent security of the funds and endowments of such institution.

ESTABLISHMENT OF BANKS.

§1. One state bank may be established, with such number of branches as the general assembly may, from time to time, deem expedient; *Provided*, that no branch bank shall be established, nor bank charter renewed, under the authority of this State, without the concurrence of two-thirds of both houses of the general assembly; *And provided also*, that not more than one bank nor branch bank shall be established, nor bank charter renewed, at any one session of the general assembly, nor shall any bank or branch bank be established, or bank charter renewed, but in conformity with the following rules:

1. At least two-fifths of the capital stock shall be reserved for the State.
2. A proportion of power in the direction of the bank shall be reserved to the State, equal at least to its proportion of stock therein.
3. The State, and the individual stockholders, shall be liable, respectively, for the debts of the bank, in proportion to their stock holden therein.
4. The remedy for collecting debts shall be reciprocal, for and against the bank.
5. No bank shall commence operations, until half of the capital stock subscribed for be actually paid in gold or silver, which amount shall, in no case, be less than one hundred thousand dollars.
6. In case any bank or branch bank shall neglect or refuse to pay, on demand, any bill, note, or obligation, issued by the corporation according to the promise therein expressed, the holder of any such note, bill, or obligation, shall be entitled to receive and recover interest thereon, until the same shall be paid, or specie payments are resumed, by said bank, at the rate of twelve per cent. per annum from the date of such demand, unless the general assembly shall sanction such suspension of specie payments; and the general assembly shall have power, after such neglect or refusal, to adopt such measures as they may deem proper, to protect and secure the rights of all concerned, and to declare the charter of such bank forfeited.
7. After the establishment of a general state bank, the banks of this State now existing may be admitted as branches thereof, upon such terms as the legislature and the said banks may agree, subject, nevertheless, to the preceding rules.

SLAVES.

§1. The general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to this State from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this State; *Provided*, that such person or slave be the bona fide property of such emigrants; *And provided also*, that laws may be passed to prohibit the introduction into this State of slaves who have committed high crimes in other states or terri-

tories. They shall have power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have full power to prevent slaves from being brought into this State as merchandise, and also to oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injuries to them extending to life or limb, and, in case of their neglect, or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of the owner or owners.

§2. In the prosecution of slaves for crimes, of a higher grade than petit larceny, the general assembly shall have no power to deprive them of an impartial trial by a petit jury.

§3. Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offense had been committed on a free white person, and on the like proof, except in case of insurrection of such slave.

MODE OF AMENDING AND REVISING THE CONSTITUTION.

The general assembly, whenever two-thirds of each house shall deem it necessary, may propose amendments to this Constitution, which proposed amendments shall be duly published in print, at least three months before the next general election of representatives, for the consideration of the people, and it shall be the duty of the several returning officers, at the next general election which shall be held for representatives, to open a poll for, and make a return to the secretary of state for the time being, of the names of all those voting for representatives who have voted on such proposed amendments, and if thereupon it shall appear that a majority of all the citizens of this State, voting for representatives, have voted in favor of such proposed amendments, and two-thirds of each house of the next general assembly shall, after such an election, and before another, ratify the same amendments by yeas and nays, they shall be valid, to all intents and purposes, as parts of this Constitution; *Provided*, That the said proposed amendments shall, at each of the said sessions, have been read three times, on three several days, in each house.

SCHEDULE.

§1. That no inconvenience may arise from a change of territorial to a permanent state government, it is declared that all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if no such change had taken place; and all process, which shall, before the third Monday in September next, be issued in the name of the Alabama Territory, shall be as valid as if issued in the name of the State.

§2. All fines, penalties, forfeitures, and escheats, accruing to the Alabama Territory, shall accrue to the use of the State.

§3. The validity of all bonds and recognizances, executed to the governor of the Alabama Territory, shall not be impaired by the change of government, but may be sued for and recovered in the name of the governor of the State of Alabama and his successors in office; and all criminal or penal actions, arising or now depending, within the limits of this State, shall be prosecuted to judgment and execution in the name of said State; all causes of action arising to individuals, and all suits at law or in equity, now depending in the several courts within the limits of this State, and not already barred by law, may be commenced in, or transferred to, such courts as may have jurisdiction thereof.

§4. All officers, civil or military, now holding commissions under the authority of the United States or of the Alabama Territory, within this State, shall continue to hold and exercise their respective offices under the authority of this State, until they shall be superseded under the authority of this

Constitution, and shall receive from the treasury of this State the same compensation which they heretofore received, in proportion to the time they shall be so employed. The governor shall have power to fill vacancies by commissions, to expire as soon as elections or appointments can be made to such offices by authority of this Constitution.

§5. All laws and parts of laws, now in force in the Alabama Territory, which are not repugnant to the provisions of this Constitution, shall continue and remain in force as the laws of this State, until they expire by their own limitation, or shall be altered, or repealed, by the legislature thereof.

§6. Every white male person above the age of twenty-one years, who shall be a citizen of the United States, and resident in this State at the time of the adoption of this Constitution, shall be deemed a qualified elector at the first election to be holden in this State. And every white male person who shall reside within the limits of this State at the time of the adoption of this Constitution, and shall be otherwise qualified, shall be entitled to hold any office or place of honor, trust, or profit under this State; any thing in this Constitution to the contrary notwithstanding.

§7. The president of this convention shall issue writs of election directed to the sheriffs of the several counties, requiring them to cause an election to be held for governor, representative to the congress of the United States, members of the general assembly, clerks of the several courts, and sheriffs of the respective counties, at the respective places of election in said counties, on the third Monday and the day following in September next, which election shall be conducted in the manner prescribed by the existing election laws of the Alabama Territory; and the said governor and members of the general assembly, then duly elected, shall continue to discharge the duties of their respective offices, for the time prescribed by this Constitution, and until their successors shall be duly qualified.

§8. Until the first enumeration shall be made, as directed by this Constitution, the county of Autauga shall be entitled to two representatives; the county of Baldwin to one representative; the county of Blount to three representatives; the county of Cahawba to one representative; the county of Clarke to two representatives; the county of Conecuh to two representatives; the county of Cotaco to two representatives; the county of Dallas to two representatives; the county of Franklin to two representatives; the county of Lauderdale to two representatives; the county of Lawrence to two representatives; the county of Limestone to three representatives; the county of Madison to eight representatives; the county of Marion to one representative; the county of Monroe to five representatives; the county of Montgomery to three representatives; the county of Mobile to one representative; the county of St. Clair to one representative; the county of Shelby to two representatives; the county of Tuscaloosa to three representatives; and the county of Washington to two representatives. And each county shall be entitled to one senator, who shall serve for one term.

§9. The oaths of office, herein directed to be taken, may be administered by any justice of the peace, until the general assembly shall otherwise direct.

ORDINANCE.

This convention, for and in behalf of the people inhabiting this State, do accept the proposition offered by the act of congress, under which they are assembled; and this convention, for and in behalf of the people inhabiting this State, do ordain, agree, and declare, that they forever disclaim all right and title to the waste or unappropriated lands lying within this State; and that the same shall be and remain at the sole and entire disposition of the United States, and, moreover, that each and every tract of land, sold by the United States after the first day of September next, shall be and remain exempt from any tax, laid by the order or under the authority of this State,

whether for State, county, township, parish, or any other purpose whatsoever, for the term of five years from and after the respective days of sales thereof; and that the lands belonging to the citizens of the United States, residing out of the limits of this State, shall never be taxed higher than the lands belonging to persons residing therein; and that no tax shall be imposed on the property of the United States; and that all navigable waters within this State shall forever remain public highways, free to the citizens of this State and of the United States, without any tax, duty, impost, or toll therefor, imposed by this State; and this ordinance is hereby declared irrevocable, without the consent of the United States.

Done in convention at Huntsville, this second day of August, in the year of our Lord one thousand eight hundred and nineteen, and of American Independence the forty-fourth.

J. W. WALKER,
President of the Convention.

Attest:
JOHN CAMPBELL,
Secretary.

AMENDMENTS TO THE CONSTITUTION.

FIRST.—ADOPTED JANUARY, 1830.*

The judges of the several courts of this State shall hold their offices for the term of six years; and for willful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment, the governor shall remove any of them on the address of two-thirds of each house of the general assembly; *Provided, however*, that the cause or causes for which such removal shall be required, shall be stated at length in such address, and entered on the journals of each house; *And provided further*, that the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defense, before any vote for such address shall pass; and in all such cases the vote shall be taken by yeas and nays, and entered on the journals of each house respectively; *And provided also*, that the judges now in office may hold their offices until the session of the general assembly which shall be held in the year one thousand eight hundred and thirty-three, and until their successors shall be elected and qualified, unless removed by address or impeachment.

SECOND.—ADOPTED 1846.

Strike out the words "one year," where they occur in the second section of the third article, and insert in lieu thereof "two years."

Strike out the words "every year," where they occur in the third section of third article, and insert in lieu thereof "at each session."

Strike out the word "annual," where it occurs in the eighth section of the fourth article, and insert in lieu thereof, "biennial."

Strike out the thirteenth section of the third article, and insert in lieu thereof the following: "At the first meeting of the general assembly after the adoption of the proposed amendments, the senators when convened shall be divided into two classes, as nearly equal as may be. The seats of the senators of the first class shall be vacated at the expiration of the two next ensuing years; so that one-half may be biennially chosen thereafter, and a rotation thereby kept up perpetually."

Strike out the twenty-ninth section of the third article, which permanently locates the seat of government in this State.

*This amendment strikes out the thirteenth section of the fifth article.

THIRD.—ADOPTED 1850.

Strike out the ninth section of the third article of the Constitution, and in lieu thereof insert the following:

"§9. The general assembly shall cause an enumeration to be made in the year eighteen hundred and fifty, and eighteen hundred and fifty-five, and every ten years thereafter, of all the white inhabitants of this State; and the whole number of representatives shall at the first regular session after such enumeration, be apportioned among the several counties, cities, or towns entitled to separate representation, according to their respective number of white inhabitants, and the said apportionment when made shall not be subject to alteration until after the next census shall be taken. The number of representatives shall not exceed one hundred, and the number of senators shall not exceed thirty-three; yet each county, notwithstanding it may not have a number of white inhabitants equal to the ratio fixed, shall have one representative."

Strike out the thirteenth section of the third article of the Constitution, and insert in lieu thereof the following:

"§13. Senators shall be chosen for the term of four years; yet at the general election after every new appointment, elections shall be held anew in every senatorial district; and the senators elected, when convened at the first session, shall be divided by lot into two classes, as nearly equal as may be; the seats of those of the first class shall be vacated at the expiration of two years, and those of the second class at the expiration of four years, dating in both cases from the day of election, so that one-half may be biennially chosen, except as above provided."

At the end of the twelfth section of the fifth article of the Constitution, add—

"But at and after the session of the general assembly to be held in the winter of the years eighteen hundred and forty-nine–fifty, the general assembly shall provide by law for the election of judges of the circuit courts by the qualified electors of their circuits respectively, and for the elections of judges of the courts of probate and other inferior courts (not including chancellors) by the qualified electors of the counties, cities, or districts for which such courts may be respectively established; the first Monday in November in any year shall be the day for any election of such judges by the people, or such other day, not to be within a less period than two months of the general election for governor, members of the general assembly, or members of congress, as the general assembly may by law prescribe; but no change to be made in any circuit or district, or in the mode or time of electing, shall affect the right of any judge to hold office during the term prescribed by the Constitution, except at the first elections thereof to be made by the people after the ratification of these amendments or either of them, which elections shall then all be had on the same day throughout the State, and the terms of the judges then to be elected shall commence on that day; vacancies in the office of judge shall be filled by the governor, and the persons appointed thereto by him shall hold until the next first Monday in November, or other election day of judges, and until the election and qualification of their successors respectively; and the general assembly shall have power to annex to the offices of any of the judges of the inferior courts the duties of clerks of such courts respectively."

CONSTITUTION OF THE STATE OF ALABAMA,

REVISED BY ORDER OF THE CONVENTION OF THE PEOPLE, ASSEMBLED AT MONTGOMERY ON THE SEVENTH DAY OF JANUARY, A. D. 1861.

WE, the people of the State of Alabama, having separated ourselves from the government known as the United States of America, and being now by our representatives in convention assembled, and acting in our sovereign and independent character, in order to establish justice, ensure domestic tranquillity, and secure the blessings of liberty to ourselves and our posterity—invoking the favor and guidance of Almighty God—do ordain and establish the following Constitution and form of government for the State of Alabama: And the boundaries of this State are established to be: Beginning where the thirty-first degree of north latitude crosses the Perdido river; thence east, to the boundary line of the State of Georgia; thence along said line to the southern boundary of the State of Tennessee; thence west, along the southern boundary line of the State of Tennessee; crossing the Tennessee river, and on to the second intersection of said river by said line; thence up said river to the mouth of Big Bear creek; thence by a direct line to the northwest corner of Washington county, in this State, as originally formed; thence southerly along the line of Mississippi to the Gulf of Mexico; thence eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence up the same to the beginning.

ARTICLE I.

DECLARATION OF RIGHTS.

That the general, great, and essential principles of liberty and free government may be recognized and established, we declare:

§1. That all freemen, when they form a social compact, are equal in rights; and that no man or set of men are entitled to exclusive, separate public emoluments or privileges, but in consideration of public services.

§2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and, therefore, they have at all times an inalienable and indefeasible right to alter, reform, or abolish their form of government, in such manner as they may think expedient.

§3. No person within this State shall, upon any pretense, be deprived of the inestimable privilege of worshiping God in the manner most agreeable to his own conscience; nor be compelled to attend any place of worship; nor shall any one ever be obliged to pay any tithes, taxes, or other rate, for the building or repairing any place of worship, or for the maintenance of any minister or ministry.

§4. No human authority ought, in any case whatever, to control or interfere with the rights of conscience.

§5. No person shall be hurt, molested, or restrained, in his religious profession, sentiments, or persuasions, provided he does not disturb others in their religious worship.

§6. The civil rights, privileges, or capacities of any citizen, shall in no way be diminished or enlarged, on account of his religious principles.

§7. There shall be no establishment of religion by law; no preference shall ever be given by law to any religious sect, society, denomination, or mode of worship; and no religious tests shall ever be required as a qualification to any office or public trust under this State.

§8. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

§9. The people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures or searches; and no warrant to search any place, or to seize any person or thing, shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

§10. In all criminal prosecutions, the accused has a right to be heard by himself and counsel; to demand the nature and cause of the accusation, and have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and, in all prosecutions, by indictment or information, a speedy public trial by an impartial jury of the county or district in which the offense shall have been committed; he shall not be compelled to give evidence against himself, nor shall he be deprived of his life, liberty, or property, but by due course of law.

§11. No person shall be accused, arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished, but in virtue of a law, established and promulgated prior to the offense, and legally applied.

§12. No person shall, for any indictable offense, be proceeded against criminally, by information; except in cases arising in the land and naval forces, or the militia when in actual service, or, by leave of the court, for oppression or misdemeanor in office.

§13. No person shall, for the same offense, be twice put in jeopardy of life or limb; nor shall any person's property be taken or applied to public use, unless just compensation be made therefor.

§14. All courts shall be open, and every person, for an injury done him, in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered, without sale, denial, or delay.

§15. No power of suspending laws shall be exercised, except by the general assembly, or its authority.

§16. Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

§17. All persons shall, before conviction, be bailable by sufficient securities, except for capital offenses, when the proof is evident, or the presumption great; and the privilege of the writ of "habeas corpus" shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

§18. The person of a debtor, where there is not strong presumption of fraud, shall not be detained in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

§19. No ex post facto law, nor law impairing the obligation of contracts shall be made.

§20. No person shall be attainted of treason or felony by the general assembly. No attainder shall work corruption of blood, nor forfeiture of estate.

§21. The estates of suicides shall descend or vest as in cases of natural death; if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

§22. The citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

§23. Every citizen has a right to bear arms in defense of himself and the State.

§24. No standing army shall be kept up without the consent of the general assembly; and, in that case, no appropriation of money for its support

shall be for a longer term than one year; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

§25. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

§26. No title of nobility, or hereditary distinction, privilege, honor, or emolument, shall ever be granted or conferred in this State; nor shall any office be created, the appointment of which shall be for a longer term than during good behavior.

§27. Emigration from this State shall not be prohibited, nor shall any citizen be exiled.

§28. The right of trial by jury shall remain inviolate.

§29. No person shall be debarred from prosecuting or defending any civil cause, for or against him or herself, before any tribunal in this State, by him or herself, or counsel.

§30. This enumeration of certain rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights herein retained, or any transgression of any of the high powers herein delegated, we declare, that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or to the following provisions, shall be void.

ARTICLE II.

DISTRIBUTION OF POWERS.

§1. The powers of the government of the State of Alabama shall be divided into three distinct departments; and each of them confided to a separate body of magistracy, to wit: Those which are legislative to one; those which are executive to another; and those which are judicial to another.

§2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

§1. The legislative power of this State shall be vested in two distinct branches; the one to be styled the senate, the other the house of representatives, and both together "The General Assembly of the State of Alabama;" and the style of their laws shall be, "Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened."

§2. The members of the house of representatives shall be chosen by the qualified electors, and shall serve for the term of two years from the day of the commencement of the general election, and no longer.

§3. The representatives shall be chosen every two years, on the first Monday in August, until otherwise directed by law.

§4. No person shall be a representative, unless he be a white man, a citizen of the State of Alabama, and shall have been an inhabitant of this State two years next preceding his election, and the last year thereof a resident of the county, city, or town, for which he shall be chosen, and shall have attained the age of twenty-one years.

§5. Every male white person of the age of twenty-one years, or upwards, who shall be a citizen of this State, and shall have resided therein one year next preceding an election, and the last three months within a county, city, or town, in which he offers to vote, shall be deemed a qualified elector; but no elector shall be entitled to vote except in the county, city, or town (entitled to separate representation) in which he may reside at the time of the election.

§6. Electors shall, in all cases, except in those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from the same.

§7. In all elections by the people, the electors shall vote by ballot, until the general assembly shall otherwise direct.

§8. Elections for representatives for the several counties shall be held at the place of holding their respective courts, and at such other places as may be prescribed by law; *Provided*, that when it shall appear to the general assembly that any city or town shall have a number of white inhabitants equal to the ratio then fixed, such city or town shall have a separate representation, according to the number of white inhabitants therein; which shall be retained so long as such city or town shall contain a number of white inhabitants equal to the ratio which may from time to time be fixed by law; and thereafter, and during the existence of the right of separate representation, in such city or town, elections for the county in which such city or town (entitled to such separate representation) is situated, shall not be held in such city or town; but it is understood, and hereby declared, that no city or town shall be entitled to separate representation, unless the number of white inhabitants in the county in which such city or town is situated, residing out of the limits of said city or town, be equal to the existing ratio; or unless the residuum or fraction of such city or town shall, when added to the white inhabitants of the county residing out of the limits of said city or town, be equal to the ratio fixed by law for one representative; *And provided*, that if the residuum or fraction of any city or town, entitled to separate representation, shall, when added to the residuum of the county in which it may lie, be equal to the ratio fixed by law for one representative, then the aforesaid county, city, or town, having the largest residuum, shall be entitled to such representation; *And provided also*, that where there are two or more counties adjoining, which have residuums or fractions over and above the ratio then fixed by law, if said residuums or fractions, when added together, will amount to such ratio, in that case one representative shall be added to that county having the largest residuum.

§9. The general assembly shall cause an enumeration to be made in the year eighteen hundred and fifty, and eighteen hundred and fifty-five, and every ten years thereafter, of all the white inhabitants of this State; and the whole number of representatives shall, at the first regular session after such enumeration, be apportioned among the several counties, cities, or towns, entitled to separate representation, according to their respective number of white inhabitants, and the said apportionment, when made, shall not be subject to alteration until after the next census shall be taken.

§10. The general assembly shall, at the first session after making every such enumeration, fix by law the whole number of senators, and shall divide the State into the same number of districts, as nearly equal, in the number of white inhabitants, as may be, each of which districts shall be entitled to one senator and no more; *Provided*, that the whole number of senators shall never be less than one-fourth, nor more than one-third, of the whole number of representatives.

§11. When a senatorial district shall be composed of two or more counties, the counties of which such district consists, shall not be entirely separated by any county belonging to another district; and no county shall be divided in forming a district.

§12. Senators shall be chosen by the qualified electors, for the term of four years, at the same time, in the same manner, and at the same places, where they may vote for members of the house of representatives; and no person shall be a senator, unless he be a white man, a citizen of the State, and an inhabitant thereof two years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and shall have attained to the age of twenty-seven years.

§13. Senators shall be chosen for the term of four years; yet, at the gen-

eral election after every new apportionment, elections shall be held anew in every senatorial district; and the senators elected, when convened at the first session, shall be divided by lot into two classes, as nearly equal as may be: the seats of those of the first class shall be vacated at the expiration of two years, and those of the second class at the expiration of four years, dating in both cases from the day of election, so that one-half may be biennially chosen, except as above provided.

§14. The house of representatives, when assembled, shall choose a speaker, and its other officers; and the senate shall choose a president, and its other officers biennially; each house shall judge of the qualifications, elections, and returns, of its own members; but a contested election shall be determined in such manner as shall be directed by law.

§15. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

§16. Each house may determine the rules of its own proceedings, punish members for disorderly behavior, and, with the consent of two-thirds, expel a member; but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state

§17. Each house, during the session, may punish, by imprisonment, any person, not a member, for disrespectful or disorderly behavior in its presence, or for obstructing any of its proceedings; *Provided*, that such imprisonment shall not, at any one time, exceed forty-eight hours.

§18. Each house shall keep a journal of its proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-tenth of the members present, be entered on the journals. Any member of either house shall have liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons of his dissent entered on the journals.

§19. Senators and representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to and returning from the same; allowing one day for every twenty miles such member may reside from the place at which the general assembly is convened; nor shall any member be liable to answer for anything spoken in debate in either house, in any court or place elsewhere.

§20. When vacancies happen in either house, the governor, or the person exercising the powers of the governor, shall issue writs of election to fill such vacancies.

§21. The doors of each house shall be open, except on such occasions as, in the opinion of the house, may require secrecy.

§22. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

§23. Bills may originate in either house, and be amended, altered, or rejected by the other; but no bill shall have the force of a law, until on three several days it be read in each house, and free discussion be allowed thereon, unless, in case of urgency, four-fifths of the house in which the bill shall be depending may deem it expedient to dispense with this rule; and every bill, having passed both houses, shall be signed by the speaker and president of their respective houses; *Provided*, that all bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject them as other bills.

§24. Each member of the general assembly shall receive from the public treasury such compensation for his services as may be fixed by law; but no

increase of compensation shall take effect during the session at which such increase shall have been made.

§25. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, except such offices as may be filled by elections by the people.

§26. No person holding any lucrative office under this State, or any other power, the office of postmaster, offices in the militia to which there is attached no annual salary, justices of the peace, commissioners of the court of county commissioners, notary public, and commissioner of deeds excepted, shall be eligible to the general assembly of this State.

§27. No person, who may hereafter be a collector or holder of public moneys, shall have a seat in either house of the general assembly, or be eligible to any office of trust or profit under this State, until he shall have accounted for, and paid into the treasury, all sums for which he may be accountable.

§28. The general assembly shall meet annually, on such day as may be provided by law, and may continue in session not more than thirty days. The next session of the general assembly shall commence on the second Monday in November, eighteen hundred and sixty-one.

§29. No special law shall be enacted for the benefit of individuals or private corporations, in cases which are provided for by a general law, or where the relief sought can be given by any court of this State.

§30. Private property shall not be taken for private use, or for the use of corporations, other than municipal, without the consent of the owner; but the right of way may be secured by law, to persons and corporations, over the lands of persons and corporations; also, the right to establish depots, stations and turnouts to works of public improvement; *Provided*, just compensation is made to the owner of such land.

§31. No power to levy taxes shall be delegated to individuals or private corporations.

§32. Taxes shall not be levied for the benefit of individuals or corporations, other than municipal corporations, without the consent of the taxpayer; but this section shall not be so construed as to affect the power of the general assembly to perfect or secure any right or privilege arising under any existing law of this State; and no right or privilege arising under any existing law of this State, shall be affected by this section.

§33. The general assembly shall not borrow or raise money on the credit of the State, except for purposes of military defense against actual or threatened invasion, rebellion, or insurrection, unless two-thirds of the members elected to each house, shall concur; nor shall the debts or liabilities of any corporation, person or persons, or other state be guaranteed; or any money, credit or thing loaned, or given away, unless by a like concurrence of each house, voting, in cases provided for in this section, by ayes and nays, to be placed upon the journals.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

§1. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled the "Governor of the State of Alabama."

§2. The governor shall be elected by the qualified electors at the time and places when they shall respectively vote for representatives.

§3. The returns of every election for governor shall be sealed up, and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall, during the first week of the session, open and publish them in the presence of both houses of the general assembly. The person having the highest number of votes shall be governor, but if two or more shall be equal and highest in votes, one of them shall be chosen governor by the joint vote of both houses. Contested elections for governor

shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law.

§4. The governor shall hold his office for the term of two years from the time of his installation, and until his successor shall be qualified, but shall not be eligible for more than four years in any term of six years; he shall be at least thirty years of age, shall be a native citizen of the State of Alabama, and native of one of the states or territories, lately styled the "United States of America."

§5. He shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during the term for which he shall have been elected.

§6. He shall be commander-in-chief of the army and navy of this State, except when acting with any other power; in which case, the general assembly shall fix his rank.

§7. He may require information in writing from the officers of the executive department, on any subject relating to the duties of their respective offices.

§8. He may, by proclamation, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; in case of disagreement between the two houses with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the day of the next annual meeting of the general assembly.

§9. He shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

§10. He shall take care that the laws be faithfully executed.

§11. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons, and remit fines and forfeitures, under such rules and regulations as shall be prescribed by law. In cases of treason he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons; and he may, in the recess of the senate, respite the sentence until the end of the next session of the general assembly.

§12. There shall be a seal of this State, which shall be kept by the governor, and used by him officially.

§13. All commissions shall be in the name and by the authority of the State of Alabama, be sealed with the state seal, signed by the governor, and attested by the secretary of state.

§14. There shall be a secretary of state, appointed by joint vote of both houses of the general assembly, who shall continue in office during the term of two years. He shall keep a fair register of all official acts and proceedings of the governor, and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before the general assembly; and shall perform such other duties as may be required of him by law.

§15. Vacancies that may happen in offices, the appointment to which is vested in the general assembly, shall be filled by the governor, during the recess of the general assembly, by granting commissions which shall expire at the end of the next session.

§16. Every bill which shall have passed both houses of the general assembly shall be presented to the governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large upon the journals, and proceed to reconsider it; if, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered; if approved by a majority of the whole number elected to that house, it shall become a law; but in such cases, the votes of both houses

shall be determined by yeas and nays; and the names of the members voting for or against the bill shall be entered on the journals of each house respectively; if any bill shall not be returned by the governor within five days, Sundays excepted, after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return, in which case it shall not be a law.

§17. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except on questions of adjournment, shall be presented to the governor, and, before it shall take effect, be approved by him, or, being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in the cases of a bill.

§18. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the State, the president of the senate shall exercise all the power and authority appertaining to the office of governor, until the time pointed out by this Constitution for the election of governor shall arrive, unless the general assembly shall provide by law for the election of a governor to fill such vacancy, or until the governor absent or impeached shall return or be acquitted.

§19. If, during the vacancy of the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the State, the speaker of the house of representatives shall, in like manner, administer the government. If there is no president of the senate, or no speaker of the house of representatives, the secretary of state shall exercise all the duties and powers appertaining to the office of governor, until the office of governor is filled, as provided by this Constitution.

§20. The president of the senate and speaker of the house of representatives, and the secretary of state, during the time they respectively administer the government, shall receive the same compensation which the governor would have received, had he been employed in the duties of his office.

§21. The governor shall always reside, during the session of the general assembly, at the place where their session may be held, and at all other times wherever, in their opinion, public good may require.

§22. No person shall hold the office of governor, and any other office or commission, civil or military, either in this State, or under any state, or any other power, at one and the same time.

§23. A state treasurer and a comptroller of public accounts shall be biennially elected, by a joint vote of both houses of the general assembly.

§24. A sheriff shall be elected in each county by the qualified electors thereof, who shall hold his office for the term of three years, unless sooner removed, and who shall not be eligible to serve either as principal or deputy for the three succeeding years. Should a vacancy occur subsequent to an election, it shall be filled by the governor, as in other cases, and the person so appointed shall continue in office until the next general election, when such vacancy shall be filled by the qualified electors, and the sheriff then elected shall continue in office for three years.

MILITIA.

§1. The general assembly shall provide by law for organizing and disciplining the militia of this State.

§2. Any person, who conscientiously scruples to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service.

§3. The governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and to repel invasions.

§4. All officers of the militia shall be elected or appointed in such manner as may be prescribed by law; *Provided*, that the general assembly shall not make any such elections or appointments, other than those of adjutants-general, and quartermasters-general.

§5. The governor shall appoint his aides-de-camp; majors-general, their aides-de-camp, and all division and staff officers; brigadiers-general shall

appoint their aids, and all other brigade staff-officers; and colonels shall appoint their regimental staff-officers.

§6. The general assembly shall fix by law the method of dividing the militia into divisions, brigades, regiments, battalions, and companies, and shall fix the rank of all staff-officers.

ARTICLE V.

JUDICIAL DEPARTMENT.

§1. The judicial power of this State shall be vested in one supreme court, circuit courts to be held in each county in the State, and such inferior courts of law and equity, to consist of not more than five members, as the general assembly may, from time to time, direct, ordain and establish.

§2. The supreme court, except in cases otherwise directed by this Constitution, shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may, from time to time, be prescribed by law; *Provided*, that the supreme court shall have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions.

§3. The supreme court shall be holden at the seat of government, but may adjourn to a different place, if that shall have become dangerous from an enemy, or from disease.

§4. The State shall be divided into convenient circuits, and each circuit shall contain not less than three, nor more than six counties; and for each circuit there shall be appointed a judge, who shall, after his appointment, reside in the circuit for which he may be appointed.

§5. The circuit court shall have original jurisdiction in all matters, civil and criminal, within this State, not otherwise excepted in this Constitution; but in civil cases, only when the matter or sum in controversy exceeds fifty dollars.

§6. A circuit court shall be held in each county in the State, at least twice in every year, and the judges of the several circuit courts may hold courts for each other, when they may deem it expedient, and shall do so when directed by law.

§7. The general assembly shall have power to establish a court or courts of chancery, with original and appellate equity jurisdiction; *Provided*, that the judges of the several circuit courts shall have power to issue writs of injunction, returnable into the courts of chancery.

§8. The general assembly shall have power to establish, in each county within this State, a court of probate, for the granting of letters testamentary and of administration, and for orphans' business.

§9. A competent number of justices of the peace shall be appointed in and for each county, in such mode and for such term of office as the general assembly may direct. Their jurisdiction in civil cases shall be limited to causes in which the amount in controversy shall not exceed fifty dollars. And in all cases tried by a justice of the peace, right of appeal shall be secured, under such rules and regulations as may be prescribed by law.

§10. Judges of the supreme and circuit courts, and courts of chancery, shall, at stated times, receive for their services a compensation, which shall be fixed by law, and shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under this State, or any other power.

§11. Chancellors and judges of the supreme court shall be elected by joint vote of both houses of the general assembly; but at and after the session of the general assembly, to be held in the winter of the year eighteen hundred and forty-nine–fifty, the general assembly shall provide by law for the election of judges of the circuit courts, by the qualified electors of their circuits

respectively, and for the election of judges of the courts of probate, and other inferior courts (not including chancellors), by the qualified electors of the counties, cities, or districts, for which such courts may be respectively established; the first Monday in November in any year shall be the day for any election of such judges by the people, or such other day not to be within a less period than two months of the general election for governor, members of the general assembly, or members of congress, as the general assembly may by law prescribe; but no change to be made in any circuit, or district, or in the mode or time of electing, shall affect the right of any judge to hold office during the term prescribed by the Constitution, except at the first elections thereof, to be made by the people, after the ratification of these amendments, or either of them, which elections shall then all be had on the same day throughout the State, and the terms of the judges then to be elected, shall commence on that day; vacancies in the office of judge shall be filled by the governor, and the persons appointed thereto by him shall hold until the next first Monday in November, or other election day of judges, and until the election and qualification of their successors respectively; and the general assembly have power to annex to the offices of any of the judges of the inferior courts the duties of clerks of such courts respectively.

§12. The judges of the several courts of this State shall hold their offices for the term of six years; and for willful neglect of duty, or other reasonable cause, which shall not be sufficient ground for impeachment, the governor shall remove any of them, on the address of two-thirds of each house of the general assembly; *Provided, however*, that the cause or causes for which such removal shall be required, shall be stated at length in such address, and entered on the journals of each house; *And provided further*, that the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defense, before any vote for such address shall pass, and in all such cases the vote shall be taken by yeas and nays, and entered on the journals of each house respectively; *And provided also*, that the judges now in office may hold their offices until the session of the general assembly, which shall be held in the year one thousand eight hundred and thirty-three, and until their successors shall be elected and qualified, unless removed by address or impeachment.

§13. No person who shall have arrived at the age of seventy years shall be appointed to, or continue in, the office of judge in this State.

§14. Clerks of the circuit and inferior courts in this State shall be elected by the qualified electors in each county, for the term of four years, and may be removed from office for such causes and in such manner as may be prescribed by law; and should a vacancy occur, subsequent to an election, it shall be filled by the judge or judges of the court in which such vacancy exists; and the person so appointed shall hold his office until the next general election; *Provided, however*, that after the year one thousand eight hundred and twenty-six, the general assembly may prescribe a different mode of appointment, but shall not make such appointment.

§15. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the State; as also the judges of the circuit courts in their respective districts, and judges of the inferior courts in their respective counties.

§16. The style of all process shall be "The State of Alabama," and all prosecutions shall be carried on in the name and by the authority of the State of Alabama, and shall conclude "against the peace and dignity of the same."

§17. There shall be an attorney-general for the State, and as many solicitors as the general assembly may deem necessary, to be elected by a joint vote thereof, who shall hold their offices for the term of four years, and shall receive for their services a compensation, which shall not be diminished during their continuance in office.

IMPEACHMENTS.

§1. The house of representatives shall have the sole power of impeaching.

§2. All impeachments shall be tried by the senate: when sitting for that purpose, the senators shall be on oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

§3. The governor and all civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than removal from office, and to disqualification to hold any office of honor, trust, or profit, under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, and punishment, according to law.

ARTICLE VI.

GENERAL PROVISIONS.

§1. The members of the general assembly, and all officers, executive and judicial, before they enter on the execution of their respective offices, shall take the following oath or affirmation, to wit: "I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the State of Alabama, so long as I continue a citizen thereof, and that I will faithfully discharge, to the best of my abilities, the duties of ——, according to law. So help me God."

§2. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

§3. The general assembly shall have power to pass such penal laws to suppress the evil practice of dueling, extending to disqualification from office or the tenure thereof, as they may deem expedient.

§4. Every person shall be disqualified from holding any office or place of honor or profit, under the authority of the State, who shall be convicted of having given or offered any bribe to procure his election or appointment.

§5. Laws shall be made to exclude from office, from suffrage, and from serving as jurors, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon, from power, bribery, tumult, or improper conduct.

§6. In all elections by the general assembly, the members thereof shall vote viva voce, and the votes shall be entered on the journals.

§7. No money shall be drawn from the treasury, but in consequence of an appropriation made by law; and a regular statement and account of the receipts and expenditures of all public moneys shall be published annually.

§8. All lands liable to taxation in this State, shall be taxed in proportion to their value.

§9. The general assembly shall direct, by law, in what manner, and in what courts, suits may be brought against the State.

§10. It shall be the duty of the general assembly to regulate, by law, the cases in which deductions shall be made from the salaries of public officers, for neglect of duty in their official capacities, and the amount of such deduction.

§11. Temporary absence from this State shall not cause a forfeiture of a residence once obtained.

§12. No member or delegate to any congress of other states or powers, nor persons holding any office of profit or trust under any foreign power, shall hold or exercise any office of profit under this State; *Provided*, that this section does not apply to any deputy, delegate or commissioner elected by this convention.

§13. Divorces from the bonds of matrimony shall not be granted, but in cases provided for by law by suit in chancery. But decrees for divorce shall be final, unless appealed from within three months from the date of the enrollment thereof.

§14. In prosecutions for the publishing of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the courts.

§15. Returns of all elections for officers, who are to be commissioned by the governor, and for members of the general assembly, shall be made to the secretary of state.

§16. The general assembly may, by a vote of two-thirds of both branches thereof, arrange and designate boundaries for the several counties of this State, which shall not be altered, except by a like vote of the general assembly. But no new county shall be hereafter formed of less extent than nine hundred square miles, nor shall it contain, at the time, less than one-hundredth part of the population of the State, and no existing county shall be hereafter reduced below such area or population by the formation of a new county.

§17. It shall be the duty of the general assembly to pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by the parties, who may choose that summary mode of adjustment.

§18. It shall be the duty of the general assembly, as soon as circumstances will permit, to form a penal code, founded on principles of reformation.

§19. Within five years after the adoption of this Constitution, the body of our laws, civil and criminal, shall be revised, digested, and arranged under proper heads, and promulgated in such manner as the general assembly may direct; and a like revision, digest, and promulgation, shall be made within every subsequent period of ten years.

§20. The general assembly shall make provisions by law for obtaining correct knowledge of the several objects proper for improvement in relation to the navigable waters, and to the roads in this State, and for making a systematic and economical application of the means appropriated to those objects.

§21. In the event of the annexation of any foreign territory to this State, laws may be passed, extending to the inhabitants of such territory all the rights and privileges which may be required by the terms of such acquisition; anything in this Constitution to the contrary notwithstanding.

EDUCATION.

Schools, and the means of education, shall forever be encouraged in this State; and the general assembly shall take measures to preserve, from unnecessary waste or damage, such lands as have been granted by the United States for the use of schools within each township in this State, and apply the funds, which may be raised from such lands, in strict conformity to the object of such grant. The general assembly shall take like measures for the improvement of such lands as have been granted by the United States to this State, for the support of a seminary of learning, and the moneys which may be raised from such lands, by rent, lease, or sale, or from any other quarter, for the purpose aforesaid, shall be and remain a fund for the exclusive support of a State University, for the promotion of the arts, literature, and the sciences; and it shall be the duty of the general assembly, as early as may be, to provide effectual means for the improvement and permanent security of the funds and endowments of such institution.

BANKING.

§1. No bank shall be established, nor bank charter renewed under the authority of this State, without the concurrence of two-thirds of each house of the general assembly.

§2. Not more than one bank shall be established, nor bank charter renewed at any one session of the general assembly, nor shall any bank be established, or bank charter renewed, but in conformity with the following rules:

1. The stockholders shall be liable respectively for the debts of the bank in proportion to their stock holden therein.

2. The remedy for collecting debts shall be reciprocal for and against the bank.

3. No bank shall commence operations until half of the capital stock subscribed for be actually paid in gold or silver, which amount shall, in no case, be less than one hundred thousand dollars.

4. Should any bank neglect or refuse to pay on demand any bill, note or obligation, issued by the corporation, according to the promise therein expressed, the holder of any such note, bill, or obligation shall be entitled to receive and recover interest thereon until the same shall be paid, or specie payments are resumed by said bank, at the rate of twelve per cent. per annum from the date of such demand, unless the general assembly shall sanction such suspension of specie payments by a vote of two-thirds of each house of the general assembly.

5. Whenever any bank suspends specie payments, the charter is thereby forfeited, unless such suspension is legalized, as is provided by the preceding rule at the then next ensuing session of the general assembly after such suspension.

SLAVERY.

§1. No slave in this State shall be emancipated by any act done to take effect in this State, or any other country.

§2. The humane treatment of slaves shall be secured by law.

§3. Laws may be enacted to prohibit the introduction into this State of slaves who have committed high crimes in other states or territories, and to regulate or prevent the introduction of slaves into this State as merchandise.

§4. In the prosecution of slaves for crimes, of a higher grade than petit larceny, the general assembly shall have no power to deprive them of an impartial trial by a petit jury.

§5. Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offense had been committed on a free white person, and on the like proof, except in case of insurrection of such slave.

EXPLANATORY PROVISIONS.

PART I.

RELATING TO THE CHANGE FROM THE TERRITORIAL TO THE STATE FORM OF GOVERNMENT.

§1. That no inconvenience may arise from a change of territorial to a permanent state government, it is declared that all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if no such change had taken place; and all process, which shall, before the third Monday in September next, be issued in the name of the Alabama Territory, shall be as valid as if issued in the name of the State.

§2. All fines, penalties, forfeitures, and escheats, accruing to the Alabama Territory, shall accrue to the use of the State.

§3. The validity of all bonds and recognizances, executed to the governor

of the Alabama Territory, shall not be impaired by the change of government, but may be sued for and recovered in the name of the governor of the State of Alabama and his successors in office; and all criminal and penal actions, arising or now depending within the limits of this State, shall be prosecuted to judgment and execution in the name of said State, all causes of action arising to individuals, and all suits at law or in equity, now depending in the several courts within the limits of this State, and not already barred by law, may be commenced in, or transferred to, such courts as may have jurisdiction thereof.

§4. All officers, civil or military, now holding commissions under the authority of the United States or of the Alabama Territory, within this State, shall continue to hold and exercise their respective offices under the authority of this State, until they shall be superseded under the authority of this Constitution, and shall receive from the treasury of this State the same compensation which they heretofore received, in proportion to the time they shall be so employed. The governor shall have power to fill vacancies by commissions, to expire as soon as elections or appointments can be made to such officers by authority of this Constitution.

§5. All laws and parts of laws, now in force in the Alabama Territory, which are not repugnant to the provisions of this Constitution, shall continue and remain in force as the laws of this State, until they expire by their own limitation, or shall be altered or repealed by the legislature thereof.

PART II.

RELATING TO THE SECESSION OF THE STATE OF ALABAMA FROM THE GOVERNMENT OF THE UNITED STATES.

CHAPTER I.

SECTION 1. *Be it declared and ordained by the people of the State of Alabama in convention assembled*, That the State of Alabama now withdraws, and is hereby withdrawn, from the Union known as "the United States of America," and henceforth ceases to be one of said United States, and is, and of right ought to be, a *sovereign* and *independent state*.

SEC. 2. *Be it further declared and ordained by the people of the State of Alabama in convention assembled*, That all the powers over the territory of said State, and over the people thereof, heretofore delegated to the government of the United States of America, be and they are hereby withdrawn from said government, and are hereby resumed and vested in the people of the State of Alabama.

SEC. 3. *Be it ordained by the people of Alabama in convention assembled*, That the Constitution framed and adopted on the eleventh day of March, 1861, by the deputies from the states of South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas, in convention assembled, at Montgomery, Alabama, be and the same is hereby APPROVED, RATIFIED and ADOPTED, as the Federal Constitution for the people of Alabama.

CHAPTER II.

SECTION 1. No law enacted by the authority of the State of Alabama, in force on the eleventh day of January, A. D. 1861, and consistent with the Constitution of this State, and not inconsistent with the ordinances of this convention, is affected by the ordinance known as the ordinance of secession, adopted on said day, and entitled "An ordinance to dissolve the union between the State of Alabama and other states, united under the compact styled the Constitution of the United States."

SEC. 2. No office, civil or military, created by this State, or under the authority of its laws, in force on the eleventh day of January, A. D. 1861, and

no officer lawfully exercising the powers or duties of such office, is affected by said ordinance of secession, except the offices of the members of the house of representatives, and of the senators of the congress of the United States of America, and these are abrogated.

SEC. 3. No offense against the laws of this State, committed before or since the adoption of said ordinance of secession, is affected by said ordinance, and no offender against said laws, is relieved or discharged from the consequences of such offense by said ordinance; and no amercement, fine, penalty, forfeiture, escheat, bond, or recognizance, accruing or enuring, in whole or in part, to the State of Alabama, whether in action or in judgment, is affected by said ordinance.

SEC. 4. No bond issued by authority of the laws of this State, or bills or coin lawfully used as money in this State, and no bond, obligation, debt or duty, due or owing to this State, or enuring, in whole or in part, to this State, before or since the adoption of said ordinance, is affected thereby.

SEC. 5. No process or proceeding of any court of this State is affected by said ordinance of secession.

SEC. 6. No right, title, franchise, easement, license or privilege given, granted or conferred to, or upon any person or body corporate, under and by authority of the laws of this State, and no right of possession or property, action or prosecution, title, claim, contract, agreement, obligation, debt or duty, of any person or body corporate, is affected by said ordinance of secession, unless the same is inconsistent with said ordinance, or is affected by some other ordinance of this convention.

SEC. 7. No rights acquired, or vested in any body corporate under the Constitution of the United States, or under any act of congress passed in pursuance thereof, or under any law of this State, and not incompatible with said ordinance of secession, is affected by said ordinance.

CHAPTER III.

RELATING TO THE CHANGES IN THE CONSTITUTION OF ALABAMA.

SECTION 1. *Be it ordained by the people of the State of Alabama in convention assembled*, That no change made in the Constitution of the State of Alabama, by this convention, shall have the effect to divest any right, title, or legal trust existing at the time of making such change. But all such changes shall have a prospective and not a retrospective effect, unless otherwise declared in the change itself.

SEC. 2. *Be it ordained by the people of Alabama in convention assembled*, That an ordinance adopted by the people of this State, in convention, at Huntsville, on the second day of August, one thousand eight hundred and nineteen, disclaiming forever all right to the waste or unappropriated lands lying within this State, is hereby repealed; but the navigable waters of this State shall remain forever free to the citizens of this State, and of such states as may unite with the State of Alabama, in a Southern slave-holding confederacy. But no right heretofore obtained, by any person or corporation, to erect a bridge, or bridges, across the navigable waters of this State, shall be affected by this ordinance; *Provided*, that the navigation of such rivers be not obstructed thereby.

MODE OF AMENDING AND REVISING THE CONSTITUTION.

The general assembly, whenever two-thirds of each house shall deem it necessary, may propose amendments to this Constitution, which proposed amendments shall be duly published in print, at least three months before the next general election of representatives, for the consideration of the people, and it shall be the duty of the several returning-officers, at the next general election which shall be held for representatives, to open a poll for, and make a return to the secretary of state for the time being, of the names of all those voting for representatives who have voted on such proposed amend-

ments, and if thereupon it shall appear that a majority of all the citizens of this State, voting for representatives, have voted in favor of such proposed amendments, and two-thirds of each house of the next general assembly shall, after such an election, and before another, ratify the same amendments by yeas and nays, they shall be valid, to all intents and purposes, as parts of this Constitution; *Provided*, that the said proposed amendments shall, at each of the said sessions, have been read three times, on three several days, in each house; *Provided further*, that a convention of the people of the State may be called by a vote of two-thirds of each branch of the general assembly, under such rules and regulations as the legislature may prescribe, to amend the Constitution, or for any other purpose.

Adopted by the people of Alabama, by the unanimous vote of their delegates in convention assembled, at the capitol, in the city of Montgomery, on this the twentieth day of March, in the year of our Lord, one thousand eight hundred and sixty-one, and of the Confederate States of America the first year.

WILLIAM M. BROOKS,
President of the Convention of the People of the State of Alabama.

Attest—A. G. HORN,
Secretary of Convention.

CONSTITUTION OF THE STATE OF ALABAMA,

AS REVISED AND AMENDED BY THE CONVENTION ASSEMBLED AT MONTGOMERY, ON THE TWELFTH DAY OF DECEMBER, A. D. 1865.

PREAMBLE.

WE, the people of the State of Alabama, by our representatives in convention assembled, in order to establish justice, ensure domestic tranquillity, provide for the common defense, promote the general welfare, and secure to ourselves and to our posterity the rights of life, liberty, and property; invoking the favor and guidance of Almighty God, do ordain and establish the following constitution and form of government for the State of Alabama—that is to say:

ARTICLE I.

DECLARATION OF RIGHTS.

That the general, great, and essential principles of liberty and free government may be recognized and established, we declare—

§1. That no man, and no set of men, are entitled to exclusive separate public emoluments or privileges, but in consideration of public services.

§2. That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and that, therefore, they have at all times an inalienable and indefeasible right to alter, reform, or abolish their form of government, in such manner as they may deem expedient.

§3. That no person within this State shall, upon any pretense whatever, be deprived of the inestimable privilege of worshiping God in the manner most agreeable to his own conscience; nor be hurt, molested, or restrained in his religious profession, sentiments, or persuasions, provided he does not disturb others in their religious worship.

§4. That no religion shall be established by law; that no preference shall be given by law to any religious sect, society, denomination, or mode of worship; that no one shall be compelled by law to attend any place of worship, nor to pay any tithes, taxes, or other rate, for building or repairing any place of worship, or for maintaining any minister or ministry; that no religious test shall be required as a qualification to any office or public trust under this State; and that the civil rights, privileges, and capacities of any citizen shall not be in any manner affected by his religious principles.

§5. That every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

§6. That the people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures or searches; and no warrant shall issue to search any place, or to seize any person or thing, without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

§7. That in all criminal prosecutions, the accused has a right to be heard by himself and counsel; to demand the nature and cause of the accusation, and have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and, in al prosecutions, by indictment or information, a speedy public trial by an impartial jury of the county or district in which the offense was committed;

and that he shall not be compelled to give evidence against himself, nor be deprived of his life, liberty, or property, but by due course of law.

§8. That no person shall be accused, arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and that no person shall be punished, but by virtue of a law, established and promulgated prior to the offense, and legally applied.

§9. That no person shall, for any indictable offense, be proceeded against criminally, by information; except in cases arising in the land and naval forces, or the militia when in actual service, or, by leave of the court, for oppression or misdemeanor in office; *Provided*, that in cases of petit larceny, assault, assault and battery, affray, unlawful assemblies, vagrancy, and other misdemeanors, the general assembly may by law dispense with a grand jury, and authorize such prosecutions before justices of the peace, or such other inferior courts as may be by law established; and the proceedings in such cases shall be regulated by law.

§10. That no person shall, for the same offense, be twice put in jeopardy of life or limb.

§11. That no person shall be debarred from prosecuting or defending, before any tribunal in this State, by himself, or counsel, any civil cause to which he is a party.

§12. That the right of trial by jury shall remain inviolate.

§13. That in prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and that in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court.

§14. That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person or reputation, shall have a remedy by due course of law, and right and justice administered, without sale, denial, or delay.

§15. That suits may be brought against the State, in such manner, and in such courts as may be by law provided.

§16. That excessive fines shall not be imposed, nor cruel punishments be inflicted.

§17. That all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident, or the presumption great; and that excessive bail shall not, in any case, be required.

§18. That the privilege of the writ of "habeas corpus" shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

§19. That treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and that no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

§20. That no person shall be attainted of treason by the general assembly; and that no conviction shall work corruption of blood, nor forfeiture of estate.

§21. That the estates of suicides shall descend or vest as in cases of natural death; and that, if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

§22. That the person of a debtor, where there is not strong presumption of fraud, shall not be detained in prison, after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

§23. That no power of suspending laws shall be exercised, except by the general assembly, or its authority.

§24. That no ex post facto law, nor any law impairing the obligation of contracts, shall be made.

§25. That private property shall not be taken or applied for public use, unless just compensation be made therefor; nor shall private property be

taken for private use, or for the use of corporations other than municipal, without the consent of the owner; *Provided, however*, that laws may be made securing to persons or corporations the right of way over the lands of other persons or corporations, and, for works of internal improvement, the right to establish depots, stations, and turnouts; but just compensation shall, in such cases, be first made to the owner.

§26. That the citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

§27. That every citizen has a right to bear arms in defense of himself and the State.

§28. That no person, who conscientiously scruples to bear arms, shall be compelled to do so, but may pay an equivalent for personal service.

§29. That no standing army shall be kept up without the consent of the general assembly; and, in that case, no appropriation for its support shall be for a longer term than one year; and that the military shall, in all cases, and at all times, be in strict subordination to the civil power.

§30. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

§31. That no title of nobility, or hereditary distinction, privilege, honor, or emolument, shall ever be granted or conferred in this State; and that no office shall be created, the appointment of which shall be for a longer term than during good behavior.

§32. That emigration from this State shall not be prohibited, and that no citizen shall be exiled.

§33. That temporary absence from the State shall not cause a forfeiture of residence once obtained.

§34. That hereafter there shall be in this State neither slavery nor involuntary servitude, otherwise than for the punishment of crime, whereof the party shall have been duly convicted.

§35. That the right of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influence from power, bribery, tumult, or other improper conduct.

§36. This enumeration of certain rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights hereby retained, or any transgression of any of the high powers by this Constitution delegated, we declare that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or to the following provisions, shall be void.

ARTICLE II.

STATE BOUNDARIES AND COUNTIES.

§1. The boundaries of this State are established and declared to be as follows—that is to say: Beginning at the point where the thirty-first degree of north latitude crosses the Perdido river; thence east, to the western boundary line of the State of Georgia; thence along said line to the southern boundary line of the State of Tennessee; thence west, along the southern boundary line of the State of Tennessee, crossing the Tennessee river, and on to the second intersection of said river by said line; thence up said river to the mouth of Big Bear creek; thence by a direct line to the northwest corner of Washington county in this State, as originally formed; thence southerly, along the line of the State of Mississippi, to the Gulf of Mexico; thence eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence up the said river, to the beginning.

§2. The general assembly may, by a vote of two-thirds of both branches

thereof, arrange and designate boundaries for the several counties of this State, which boundaries shall not be altered except by a like vote; but no new county shall be hereafter formed of less extent than six hundred square miles, nor shall any existing county be reduced to a less extent than six hundred square miles; and no county shall be formed not containing a sufficient number of inhabitants to entitle it to one representative under the existing ratio of representation, nor unless the counties from which it is taken shall be left with the required number entitling them to separate representation.

ARTICLE III.

DISTRIBUTION OF POWERS OF GOVERNMENT.

§1. The powers of the government of the State of Alabama shall be divided into three distinct departments; each of which shall be confided to a separate body of magistracy, to wit: those which are legislative to one; those which are executive to another; and those which are judicial to another.

§2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

§1. The legislative power of this State shall be vested in two distinct branches; the one to be styled the senate, the other the house of representatives, and both together "The General Assembly of the State of Alabama."

§2. All laws shall be passed by original bill; and their style shall be, "Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened." Each law shall embrace but one subject, which shall be described in the title; and no law, or any section of any law, shall be revised or amended by reference only to its title and number, but the law or section revised or amended shall itself be set forth at full length.

§3. Members of both houses of the general assembly shall be chosen by the qualified electors; and the regulations for holding such elections shall, as to time, place, and manner, be the same for each house, and shall be prescribed by law. After the special election to be held on the first Monday in November, 1865, such elections shall, until otherwise directed by law, take place on the first Monday in August.

§4. No person who holds any lucrative office under the United States, or under this State, or under any other state or government (except postmasters, officers in the militia, to whose office no annual salary is attached, justices of the peace, members of the court of county commissioners, notaries public, and commissioners of deeds excepted); no person who has been convicted of having given or offered any bribe to procure his election; no person who has been convicted of bribery, forgery, perjury, or other high crime or misdemeanor which may be by law declared to disqualify him; and no person who has been a collector or holder of public moneys, and has failed to account for and pay over into the treasury all sums for which he may be by law accountable, shall be eligible to the general assembly.

§5. Representatives shall be chosen for the term of two years; and no person shall be a representative who is not a white man, twenty-one years of age, a citizen of the United States, and who has not been an inhabitant of this State for the two years next preceding the election, and for the last year thereof a resident of the county for which he is chosen.

§6. The house of representatives shall consist of not more than one hundred members, who shall be apportioned by the general assembly among the several counties of the State according to the number of white inhabitants in

them respectively; and, to this end, the general assembly shall cause an enumeration of all the inhabitants of the State to be made in the year one thousand eight hundred and sixty-six, and again in the year one thousand eight hundred and seventy-five, and every ten years thereafter, and shall make an apportionment of the representatives among the several counties at the first regular session after each enumeration; which apportionment, when made, shall not be subject to alteration, until after the next census shall have been taken; *Provided*, that each county shall be entitled to at least one representative; *Provided further*, that where two or more adjoining counties shall each have a residuum or fraction over and above the ratio then fixed by law, which fractions, when added together, equal or exceed that ratio, in that case, the county having the largest fraction shall be entitled to one additional representative.

§7. The whole number of senators shall be not less than one-fourth, nor more than one-third of the whole number of representatives; and it shall be the duty of the general assembly, at its first session after the making of each enumeration, as provided by the last preceding section, to fix by law the number of senators, and to divide the State into as many senatorial districts as there are senators; which districts shall be as nearly equal to each other as may be in the number of white inhabitants, and each shall be entitled to one senator, and no more; *Provided*, that in the formation of said districts, no county shall be divided, and no two or more counties, which are separated entirely by a county belonging to another district, shall be joined into one district; *And provided further*, that the senatorial districts, when formed, shall not be changed until after the next census shall have been taken.

§8. No person shall be a senator, who is not a white man, at least twenty-seven years of age, a citizen of the United States, and who has not been an inhabitant of this State for two years next preceding the election, and for the last year thereof a resident in the district for which he is chosen.

§9. Senators shall be chosen for the term of four years; yet, at the first general election after each new apportionment, elections shall be held anew in all the senatorial districts; and the senators elected, when convened at the next ensuing session of the general assembly, shall be divided by lot into two classes, as nearly equal to each other as may be; the seats of the senators of the first class shall be vacated at the expiration of two years, and those of the second class at the expiration of four years from the day of election, so that (except as above provided) one-half of the senators may be chosen biennially.

§10. The general assembly shall meet annually, on such day as may be by law prescribed; and shall not remain in session longer than thirty days, unless by a vote of two-thirds of each house.

§11. At the first regular or called session after each general election for representatives, the senate shall choose a president and its other officers, and the house of representatives shall choose a speaker and its other officers; and the officers so chosen shall be entitled to hold their respective offices until the next general election for representatives. Each house shall judge of the qualifications, elections and returns of its own members; but a contested election shall be determined in such manner as may be by law provided.

§12. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

§13. Each house may determine the rules of its own proceedings, punish members for disorderly behavior, and, with the consent of two-thirds, expel a member; but not a second time for the same offense; and shall have all other powers necessary for a branch of the legislature of a free and independent state.

§14. Each house may, during the session, punish by imprisonment any person, not a member, for disrespectful or disorderly behavior in its pres-

ence, or for obstructing any of its proceedings; *Provided*, that such imprisonment shall not, at any one time, exceed forty-eight hours.

§15. Each house shall keep a journal of its own proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of any two members present, be entered on the journals. Any member of either house shall have leave to dissent from, and protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons of his dissent entered on the journals.

§16. The doors of each house shall be open, except on such occasions as, in the opinion of the house, may require secrecy.

§17. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

§18. Bills may originate in either house, and be amended, altered, or rejected by the other; but no bill shall have the force of a law until it be read in each house on three several days, and free discussion thereon be allowed; unless, in case of urgency, four-fifths of the house in which the bill may be depending, shall deem it expedient to dispense with this rule; and every bill, having passed both houses, shall be signed by the speaker and president of the respective houses; *Provided*, that all bills for raising revenue shall originate in the house of representatives, but may be amended or rejected by the senate as other bills.

§19. In all elections by the general assembly the members shall vote viva voce, and the votes shall be entered on the journal.

§20. No senator or representative shall, during the term for which he was elected, be elected or appointed to any civil office of profit under the State, except such offices as may be filled by elections by the people.

§21. Senators and representatives shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the session of the general assembly, and in going to and returning from the same; allowing one day for every twenty miles such member may reside from the place at which the general assembly is convened; nor shall any member be liable to answer for anything spoken in debate in either house, in any court or place elsewhere.

§22. Each member of the general assembly shall receive from the public treasury such compensation for his services as may be fixed by law; but no increase of compensation shall take effect during the session at which such increase shall have been made.

§23. When vacancies happen in either house, the governor, or the person exercising the power of governor for the time being, shall issue writs of election to fill such vacancies.

§24. The house of representatives shall have the sole power of preferring impeachments; all impeachments shall be tried by the senate; the senators, when sitting for that purpose, shall be on oath or affirmation; and no person shall be convicted under an impeachment, without the concurrence of two-thirds of the senators present.

§25. It shall be the duty of the general assembly to pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by the parties, who may choose that summary mode of adjustment.

§26. It shall be the duty of the general assembly, from time to time, as circumstances may require, to frame and adopt a penal code, founded on principles of reformation.

§27. It shall also be the duty of the general assembly, within five years after the adoption of this Constitution, and within every subsequent period of ten years, to make provision by law for the revision, digesting and promulgation of all the public statutes of this State, both civil and criminal.

§28. The general assembly shall have power to pass such penal laws as

they may deem expedient to suppress the evil practice of dueling, extending to disqualification to hold office.

§29. It shall be the duty of the general assembly to regulate by law the cases in which deductions shall be made from the salaries of public officers, for neglect of duty in their official capacities, and the amount of such deductions.

§30. Divorces from the bonds of matrimony shall not be granted, but in the cases by law provided for, and by suit in chancery; but decrees in chancery for divorce shall be final, unless appealed from, in the manner prescribed by law, within three months from the date of the enrollment thereof.

§31. It shall be the duty of the general assembly, at its next session, and from time to time thereafter as it may deem proper, to enact laws prohibiting the intermarriage of white persons with negroes, or with persons of mixed blood, declaring such marriages null and void ab initio, and making the parties to any such marriage subject to criminal prosecutions, with such penalties as may be by law prescribed.

§32. The general assembly shall make provision by law for obtaining correct knowledge of the several objects proper for improvement in relation to the roads and navigable waters in this State, and for making a systematic and economical application of the means appropriated to those objects.

§33. The general assembly shall, from time to time, enact necessary and proper laws for the encouragement of schools and the means of education; shall take proper measures to preserve from waste or damage such lands as have been or may be granted by the United States for the use of schools in each township in this State, and apply the funds which may be raised from such lands in strict conformity with the object of such grant; shall take like measures for the improvement of such lands as have been or may hereafter be granted by the United States to this State for the support of a seminary of learning; and the money which may be raised from such lands, by rent, lease, or sale, or from any other quarter, for the purpose aforesaid, shall be and forever remain a fund for the exclusive support of a State University for the protection of the arts, literature, and the sciences; and it shall be the duty of the general assembly to provide by law effectual means for the improvement and permanent security of the funds of such institution.

§34. Not more than one bank shall be established, nor more than one bank charter be renewed, at any one session of the general assembly; nor shall any bank be established, nor any bank charter be renewed without the concurrence of two-thirds of each house of the general assembly, and in conformity with the following rules—that is to say:

Rule 1. The stockholders shall be respectively liable for the debts of the bank in proportion to the amount of their stock.

Rule 2. The remedy for the collection of debts shall be reciprocal for and against the bank.

Rule 3. No bank shall commence operations, until one-half of the capital stock subscribed for be actually paid in gold and silver; which amount shall, in no case, be less than one hundred thousand dollars.

Rule 4. If any bank shall neglect or refuse to pay, on demand, any bill, note, or obligation issued by the corporation, according to the promise therein expressed, the holder of such bill, note, or obligation, shall be entitled to receive and recover interest thereon until paid, or until specie payments are resumed by the bank, at the rate of twelve per centum per annum from the date of such demand; unless the general assembly shall, by a vote of two-thirds of each house thereof, sanction such suspension of specie payments.

Rule 5. Whenever any bank suspends specie payments, its charter is thereby forfeited; unless such suspension shall be sanctioned and legalized, at the next session of the general assembly, by a vote of two-thirds of each house thereof.

§35. The general assembly shall provide by law for organizing and dis-

ciplining the militia of this State, in such manner as they may deem expedient, not incompatible with the Constitution and laws of the United States; shall fix the rank of all staff-officers, and prescribe the manner in which all officers shall be appointed or elected; *Provided*, that no other officers than adjutants-general, and quartermasters-general shall be appointed by the general assembly; *And provided further*, that majors-general shall appoint their aids and all division and staff officers, brigadiers-general shall appoint their aids and all other brigade staff-officers, and colonels shall appoint their regimental staff-officers.

§36. It shall be the duty of the general assembly, at its next session, and from time to time thereafter, to enact such laws as will protect the freedmen of this State in the full enjoyment of all their rights of person and property, and guard them and the State against any evils that may arise from their sudden emancipation.

§37. No money shall be drawn from the treasury, but in pursuance of an appropriation made by law; and a regular statement and account of the receipts and expenditures of all public moneys shall be published annually, in such manner as may be by law directed.

§38. No special law shall be enacted for the benefit of individuals or corporations, in cases which are provided for by a general law, or where the relief sought can be given by any court of this State.

§39. All lands liable to taxation in this State, shall be taxed in proportion to their value.

§40. No power to levy taxes shall be delegated to individuals or private corporations.

§41. The general assembly shall not borrow or raise money on the credit of the State (except for purposes of military defense against actual or threatened invasion, rebellion, or insurrection), without the concurrence of two-thirds of the members of each house; nor shall the debts or liabilities of any corporation, person or persons, or other state, be guaranteed, nor any money, credit, or other thing, be loaned or given away, except by a like concurrence of each house; and the votes shall in each case, be taken by yeas and nays, and be entered on the journals.

§42. In the event of the annexation of any foreign territory to this State, the general assembly shall enact laws, extending to the inhabitants of the acquired territory all the rights and privileges which may be required by the terms of the acquisition; anything in this Constitution to the contrary notwithstanding.

ARTICLE V.

EXECUTIVE DEPARTMENT.

§1. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled the "Governor of the State of Alabama."

§2. The governor shall be elected by the qualified electors at the time and places at which they shall respectively vote for representatives.

§3. The returns of every election for governor shall be sealed up, and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall, during the first week of the session, open and publish them in the presence of both houses of the general assembly. The person having the highest number of votes shall be governor, but if two or more shall be equal and highest in votes, one of them shall be chosen governor by the joint vote of both houses. Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law.

§4. The governor shall hold his office for the term of two years from the time of his installation, and until his successor shall be qualified, but shall not be eligible for more than four years in any term of six years; he shall be at least thirty years of age, a native citizen of the United States, and shall

have resided in this State at least four years next preceding the day of his election.

§5. He shall, at stated times, receive a compensation for his services, which shall not be either increased or diminished during the term for which he shall have been elected.

§6. He shall always reside, during the session of the general assembly, at the place where their session may be held, and at other times wherever, in their opinion, the public good may require.

§7. He shall be commander-in-chief of the army and navy of this State, and of the militia thereof, except when they shall be called into the service of the United States; and when acting in the service of the United States, the general assembly shall fix his rank.

§8. He shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and to repel invasions; and shall appoint his aides-de-camp.

§9. He may require from the secretary of state, the comptroller of public accounts, and the state treasurer information in writing on any subject relating to the duties of their respective offices.

§10. He may, by proclamation, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if, since their last adjournment, that shall have become dangerous from an enemy, or from contagious disorders; and in case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he may think proper, not beyond the day of the next annual meeting of the general assembly.

§11. He shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient.

§12. He shall take care that the laws are faithfully executed.

§13. In all criminal and penal cases, except those of treason and impeachment, he shall have power to grant reprieves and pardons, and to remit fines and forfeitures, under such rules and regulations as may be prescribed by law; and in cases of treason he shall have power, by and with the advice and consent of the senate, to grant reprieves and pardons; and in the recess of the senate, he may respite the sentence until the end of the next session of the general assembly.

§14. There shall be a great seal of the State, which shall be kept and used by the governor officially; and the seal now in use shall continue to be the great seal of the State, until another shall have been adopted by the general assembly.

§15. Vacancies that may happen in offices, the appointment of which is vested in the general assembly, shall, during the recess of the general assembly, be filled by the governor, by granting commissions which shall expire at the end of the next session.

§16. Every bill which shall have passed both houses of the general assembly shall be presented to the governor; if he approve, he shall sign it, but if not, he shall return it, with his objections, to the house in which it originated, who shall enter the objections at large upon the journals, and proceed to reconsider it; if, after such reconsideration, a majority of the whole number elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by whom it shall likewise be reconsidered; and if approved by a majority of the whole number elected to that house, it shall become a law; but in such cases, the votes of both houses shall be determined by yeas and nays; and the names of the members voting for or against the bill shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor within five days, Sundays excepted, after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return, in which case it shall not be a law.

§17. Every order, resolution, or vote, to which the concurrence of both houses may be necessary (except on questions of adjournment, and for bringing on elections by the two houses) shall be presented to the governor, and, before it shall take effect, be approved by him, or, being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in the cases of a bill.

§18. No person shall at one and the same time, hold the office of governor, and any other office or commission, civil or military, either in this State, the United States, or any other state or government.

§19. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the State, the president of the senate shall exercise all the power and authority appertaining to the office of governor, until the time appointed by the Constitution for the election of governor shall arrive (unless the general assembly shall provide by law for the election of a governor to fill such vacancy), or until the governor absent or impeached shall return or be acquitted; and if, during such vacancy in the office of governor, the president of the senate shall be impeached, removed from office, refuse to qualify, die, resign, or be absent from the State, the speaker of the house of representatives shall, in like manner, administer the government.

§20. The president of the senate and speaker of the house of representatives, shall, during the time they respectively administer the government, receive the same compensation which the governor would have received if he had been employed in the duties of his office.

ARTICLE VI.

JUDICIAL DEPARTMENT.

§1. The judicial power of this State shall be vested in one supreme court, circuit courts to be held in each county in the State, and such inferior courts of law and equity, to consist of not more than five members, as the general assembly may, from time to time, direct, ordain and establish.

§2. Except in cases otherwise directed in this Constitution, the supreme court shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may, from time to time, be prescribed by law; *Provided*, that said court shall have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions.

§3. The supreme court shall be holden at the seat of government; but if that shall have become dangerous from an enemy, or from disease, may adjourn to a different place.

§4. The State shall be divided into convenient circuits, each of which shall contain not less than three, nor more than six counties; and for each circuit there shall be appointed a judge, who shall, after his appointment, reside in the circuit for which he may be appointed.

§5. The circuit court shall have original jurisdiction in all matters, civil and criminal, within this State, not otherwise excepted in this Constitution; but in civil cases, only when the matter or sum in controversy exceeds fifty dollars.

§6. A circuit court shall be held in each county in the State at least twice in every year, and the judges of the several circuits may hold courts for each other, when they may deem it expedient, and shall do so when directed by law.

§7. The general assembly shall have power to establish a court or courts of chancery, with original and appellate equity jurisdiction; *Provided*, that the judges of the several circuit courts shall have power to issue writs of injunction, returnable into the courts of chancery.

§8. The general assembly shall have power to establish, in each county within this State, a court of probate, for the granting of letters testamentary and of administration, and for orphans' business.

§9. A competent number of justices of the peace shall be appointed in and for each county, in such mode and for such term of office as the general assembly may by law direct; whose jurisdiction in civil cases shall be limited to causes in which the amount in controversy shall not exceed one hundred dollars; and in all cases tried by a justice of the peace, right of appeal shall be secured, under such rules and regulations as may be prescribed by law.

§10. The judges of the supreme court, circuit courts, and courts of chancery, shall, at stated times, receive for their services a compensation, which shall be fixed by law, and shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any office of profit or trust under this State, the United States, or any other power.

§11. Judges of the supreme court and chancellors shall be elected by joint vote of both houses of the general assembly; judges of the circuit and probate courts, and of such other inferior courts as may be by law established, shall be elected by the qualified electors of the respective counties, cities, or districts, for which such courts may be established. Elections of judges by the people shall be held on the first Monday in May, or such other day as may be by law prescribed, not within a less period than two months of the day fixed by law for the election of governor, members of the general assembly, or members of congress. Vacancies in the office of circuit judge, probate judge, or judge of any other inferior court established by law, shall be filled by the governor; and the person appointed by him shall hold office until the next election day by law appointed for the election of judges, and until his successor shall have been elected and qualified.

§12. The judges of the several courts of this State shall hold their offices for the term of six years; and the right of any judge to hold his office for the full term hereby prescribed, shall not be affected by any change hereafter made by law in any circuit or district, or in the mode or time of election; but for any willful neglect of duty, or any other reasonable cause, which shall not be sufficient ground for impeachment, the governor shall remove any judge, on the address of two-thirds of each house of the general assembly; *Provided*, that the cause or causes for which said removal may be required, shall be stated at length in such address, and entered on the journals of each house; *And provided further*, that the judge intended to be removed shall be notified of such cause or causes, and shall be admitted to a hearing in his own defense, before any vote for such address; and in all such cases, the vote shall be taken by yeas and nays, and be entered on the journals of each house respectively.

§13. No person who shall have arrived at the age of seventy years shall be appointed or elected to, or shall continue in the office of judge in this State.

§14. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the State; as also the judges of the circuit court within their respective circuits, and judges of the inferior courts within their respective counties.

§15. Clerks of the circuit courts, and of such inferior courts as may be by law established, shall be elected by the qualified electors in each county, for the term of four years; and may be removed from office for such causes, and in such manner, as may be by law prescribed. Vacancies in the office of clerk shall be filled by the judge of the court, and the person so appointed shall hold office until the next general election, and until his successor is elected and qualified; *Provided*, that the general assembly shall have power to annex the duties of clerk to the office of judge of any inferior court by law established.

§16. The style of all process shall be "The State of Alabama," and all prosecutions shall be carried on in the name and by the authority of the State of Alabama, and shall conclude "against the peace and dignity of the same."

ARTICLE VII.

STATE AND COUNTY OFFICERS.

§1. A secretary of state, a comptroller of public accounts, and a state treasurer shall be elected by a joint vote of both houses of the general assembly, each of whom shall continue in office during the term of two years, shall perform all the duties that may be required of him by law, and receive such compensation as may be by law provided.

§2. An attorney-general, and as many solicitors as there are judicial circuits in this State, shall be elected by a joint vote of both houses of the general assembly, each of whom shall hold his office for the term of four years, shall perform all the duties that may be required of him by law, and shall receive such compensation for his services as may be by law provided, which shall not be diminished during his continuance in office.

§3. A sheriff shall be elected in each county by the qualified electors thereof, who shall hold his office for the term of three years, unless sooner removed, and shall not be eligible to serve, either as principal or deputy, for any two successive terms. Vacancies in the office of sheriff shall be filled by the governor, as in other cases; and the person so appointed shall continue in office until the next general election in the county for sheriff as by law provided.

§4. No member of congress, nor any person who holds any office of profit or trust under the United States (except postmasters), or any other state or government; nor any person who shall have been convicted of having given or offered any bribe to procure his election or appointment; nor any person who shall have been convicted of bribery, forgery, perjury, or other high crime or misdemeanor which may be by law declared to disqualify him, shall be eligible to any office of profit or trust under the State.

§5. All commissions shall be in the name and by the authority of the State of Alabama; shall be sealed with the great seal of the State, signed by the governor, and attested by the secretary of state.

§6. All civil officers of this State, legislative, executive, and judicial, before they enter upon the execution of the duties of their respective offices, shall take the following oath: "I solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully discharge, to the best of my abilities, the duties of the office of ———. So help me God."

§7. All civil officers of the State, whether elected by the people, or by the general assembly, or appointed by the governor, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, trust, or profit, under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, and punishment according to law.

ARTICLE VIII.

ELECTIONS BY THE PEOPLE.

§1. Every white male person, of the age of twenty-one years and upwards, who shall be a citizen of the United States, and shall have resided in this State one year next preceding the election, and the last three months thereof in the county in which he offers to vote, shall be deemed a qualified elector; *Provided*, that no soldier, seaman, or marine, in the regular army or navy of the United States, and no person who shall have been convicted of bribery, forgery, perjury, or other high crime or misdemeanor which may be by law declared to disqualify him, shall be entitled to vote at any election in this State.

§2. In all elections by the people, the electors shall vote by ballot, until otherwise directed by law.

§3. Except in cases of treason, felony, or breach of the peace, electors shall be privileged from arrest during their attendance at elections, and in going to and returning from the same.

§4. Returns of elections for all civil officers elected by the people, who are to be commissioned by the governor, and also for members of the general assembly, shall be made to the secretary of state.

ARTICLE IX.

AMENDMENT AND REVISION OF THE CONSTITUTION.

§1. The general assembly may, whenever two-thirds of each house shall deem it necessary, propose amendments to this Constitution; which proposed amendments shall be duly published in print (in such manner as the general assembly may direct), at least three months before the next general election for representatives, for the consideration of the people; and it shall be the duty of the several returning-officers, at the next ensuing general election for representatives, to open a poll for the vote of the qualified electors on the proposed amendments, and to make a return of said vote to the secretary of state; and if it shall thereupon appear that a majority of all the qualified electors of the State, who voted for representatives, voted in favor of the proposed amendments, and two-thirds of each house of the next general assembly, before another election, shall ratify said amendments, each house voting by yeas and nays, said amendments shall be valid, to all intents and purposes, as parts of this Constitution; *Provided*, that said proposed amendments shall, at each of said sessions of the general assembly, have been read three times, on three several days, in each house.

§2. After the expiration of twelve months from the adoption of this Constitution, no convention shall be held for the purpose of altering or amending the Constitution of this State, unless the question of convention or no convention shall be first submitted to a vote of the qualified electors of the State, and approved by a majority of the electors voting at said election.

Adopted by the convention, by the unanimous vote of all the delegates present, at the State capitol, in the city of Montgomery, on this the thirtieth day of September, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the ninetieth year.

BENJ. FITZPATRICK,
President of Convention.

Attest—WM. H. OGBOURNE,
Secretary of Convention.

CONSTITUTION OF THE STATE OF ALABAMA.
1868.

PREAMBLE.

We, the people of the State of Alabama, by our representatives in convention assembled, in order to establish justice, ensure domestic tranquillity, provide for the common defense, promote the general welfare, and secure to ourselves and to our posterity the rights of life, liberty, and property; invoking the favor and guidance of Almighty God, do ordain and establish the following constitution and form of government for the State of Alabama:

ARTICLE I.

DECLARATION OF RIGHTS.

That the great, general, and essential principles of liberty and free government may be recognized and established, we declare—

§1. That all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.

§2. That all persons resident in this State, born in the United States, or naturalized, or who shall have legally declared their intention to become citizens of the United States, are hereby declared citizens of the State of Alabama, possessing equal civil and political rights and public privileges.

§3. That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and that, therefore, they have at all times an inherent right to change their form of government, in such manner as they may deem expedient.

§4. That no person shall be deprived of the right to worship God according to the dictates of his own conscience.

§5. That no religion shall be established by law.

§6. That any citizen may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

§7. That the people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures or searches; and that no warrant shall issue to search any place, or to seize any person or thing, without probable cause, supported by oath or affirmation.

§8. That in all criminal prosecutions, the accused has a right to be heard by himself and counsel, or either; to demand the nature and cause of the accusation; to have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and, in all prosecutions, by indictment or information, a speedy public trial by an impartial jury of the county or district in which the offense was committed; and that he shall not be compelled to give evidence against himself, nor be deprived of his life, liberty, or property, but by due process of law.

§9. That no person shall be accused, or arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and that no person shall be punished, but by virtue of a law, established and promulgated prior to the offense, and legally applied.

§10. That no person shall, for any indictable offense, be proceeded against criminally, by information; except in cases arising in the land and naval service, or in the militia when in actual service, or, by leave of the court, for oppressions or misdemeanor in office; *Provided*, that in cases of petit lar-

ceny, assault, assault and battery, affray, unlawful assemblies, vagrancy, and other misdemeanors, the general assembly may by law dispense with a grand jury, and authorize such prosecutions and proceedings before justices of the peace, or such other inferior courts as may be by law established.

§11. That no person shall, for the same offense, be twice put in jeopardy of life or limb.

§12. That no person shall be debarred from prosecuting or defending, before any tribunal in this State, by himself, or counsel, any civil cause to which he is a party.

§13. That the right of trial by jury shall remain inviolate.

§14. That in prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and that in all indictments for libel, the jury shall have the right to determine the law and the facts, under the direction of the court.

§15. That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person or reputation, shall have a remedy by due process of law, and right and justice shall be administered, without sale, denial, or delay.

§16. That suits may be brought against the State, in such manner, and in such courts as may be by law provided.

§17. That excessive fines shall not be imposed, or cruel punishment inflicted.

§18. That all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses, when the proof is evident, or the presumption great. Excessive bail shall not, in any case, be required.

§19. The privilege of writ of habeas corpus shall not be suspended, except when necessary for public safety in times of rebellion or invasion.

§20. That treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and that no person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or his own confession in open court.

§21. That no person shall be attainted of treason by the general assembly; and that no conviction shall work corruption of blood, or forfeiture of estate.

§22. That no person shall be imprisoned for debt.

§23. That no power of suspending laws shall be exercised, except by the general assembly, or by its authority.

§24. That no ex post facto law, or any law impairing the obligation of contracts, shall be made.

§25. That private property shall not be taken or applied for public use, unless just compensation be made therefor; nor shall private property be taken for private use, or for the use of corporations, other than municipal, without the consent of the owner; *Provided, however*, that laws may be made securing to persons or corporations the right of way over the lands of either persons or corporations, and for works of internal improvement, the right to establish depots, stations, and turnouts, but just compensation shall, in all cases, be first made to the owner.

§26. That all navigable waters shall remain forever public highways, free to the citizens of the State, and of the United States, without tax, impost or toll imposed; and that no tax, toll, impost or wharfage shall be demanded or received from the owner of any merchandise or commodity, for the use of the shores, or any wharf erected on the shores, or in or over the waters of any navigable stream, unless the same be expressly authorized by the general assembly.

§27. That the citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the power of government, for redress of grievances, or other purposes, by petition, address or remonstrance.

§28. That every citizen has a right to bear arms in defense of himself and the State.

§29. That no person who conscientiously scruples to bear arms shall be compelled to do so, but may pay an equivalent for personal service.

§30. That no standing army shall be kept up without the consent of the general assembly; and, in that case, no appropriation for its support shall be made for a longer term than one year, and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

§31. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner; or in time of war, but in a manner to be prescribed by law.

§32. That no title of nobility, or hereditary distinction, privilege, honor, or emolument, shall ever be granted or conferred in this State; that no property qualification shall be necessary to the election to, or holding of, any office in this State, and that no office shall be created, the appointment to which shall be for a longer time than during good behavior.

§33. That emigration from the State shall not be prohibited, and that no citizen shall be exiled.

§34. That temporary absence from the State shall not cause a forfeiture of residence once obtained.

§35. That no form of slavery shall exist in this State; and there shall be no involuntary servitude, otherwise than for the punishment of crime, of which the party shall have been duly convicted.

§36 The right of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult, or other improper conduct.

§37. That this State has no right to sever its relations to the Federal Union, or to pass any law in derogation of the paramount allegiance of the citizens of this State to the government of the United States.

§38. That this enumeration of certain rights shall not impair or deny others retained by the people.

ARTICLE II.

STATE AND COUNTY BOUNDARIES.

§1. The boundaries of this State are established and declared to be as follows—that is to say: Beginning at the point where the thirty-first degree of north latitude crosses the Perdido river; thence east, to the western boundary line of the State of Georgia; thence along said line to the southern boundary line of the State of Tennessee; thence west, along the southern boundary line of the State of Tennessee, crossing the Tennessee river, and on to the second intersection of said river by said line; thence up said river to the mouth of Big Bear creek; thence by a direct line to the northwest corner of Washington county, in this State, as originally formed; thence southerly along the line of the State of Mississippi to the Gulf of Mexico; thence eastwardly, including all islands within six leagues of the shore, to the Perdido river; and thence up the said river to the beginning.

§2. The general assembly may, by a two-thirds vote of both houses thereof, arrange and designate boundaries for the several counties of this State, which boundaries shall not be altered, except by a like vote. But no new counties shall be hereafter formed of less extent than six hundred square miles; and no existing county shall be reduced to less extent than six hundred square miles; and no new county shall be formed which does not contain a sufficient number of inhabitants to entitle it to one representative under the ratio of representation existing at the time of its formation, or unless the county or counties from which it is taken shall be left with the required number of inhabitants entitling such county or counties to separate representation.

ARTICLE III.

DISTRIBUTION OF POWERS OF GOVERNMENT.

§1. The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative to one; those which are executive to another; and those which are judicial to another.

§2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

§1. The legislative power of this State shall be vested in a general assembly, which shall consist of a senate and house of representatives.

§2. The style of the laws of this State shall be, "Be it enacted by the General Assembly of Alabama." Each law shall contain but one subject, which shall be clearly expressed in its title; and no law shall be revised or amended unless the new act contain the entire act revised, or the section or sections amended; and the section or sections so amended shall be repealed.

§3. Senators and representatives shall be elected by the qualified electors on the Tuesday after the first Monday in November. The term of office of the senators shall be four years, and that of the representatives two years, commencing on the day after the general election.

§4. No person shall be a representative unless he is eligible as an elector to vote for members of the general assembly.

§5. No person shall be a senator unless he be eligible as an elector to vote for members of the general assembly, and shall be twenty-seven years of age, and shall have resided for two years within the State, and for the last year thereof within the district for which he shall be chosen.

§6. The house of representatives, when assembled, shall choose a speaker and its other officers; and the senate shall choose a president, in the absence of the lieutenant-governor, and its other officers; each house shall judge of the qualifications, elections and returns of its own members, but a contested election shall be determined in such manner as shall be directed by law. The president of the senate and the speaker of the house of representatives shall remain in office until their successors are elected and qualified.

§7. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

§8. Each house may determine the rules of its own proceedings, punish members for disorderly conduct, and, with the consent of two-thirds, expel a member; but not a second time for the same cause; and shall have all other powers necessary for a branch of the legislature of a free and independent state.

§9. Each house, during the session, may punish by imprisonment any person, not a member, for disrespectful or disorderly behavior in its presence, or obstructing any of its proceedings; *Provided*, that such imprisonment shall not, at any time, exceed forty-eight hours.

§10. Each house shall keep a journal of its proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-tenth of the members present, be entered on the journals. Any member of either house shall have liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons of his dissent entered on the journals.

§11. Members of the general assembly shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest; and they shall not be subject to any civil process during the session of the general assembly, nor for fifteen days next before the commencement and after the termination of each session.

§12. When vacancies occur in either house, the governor, or the person exercising the powers of the governor, shall issue writs of elections to fill such vacancies.

§13. The doors of each house shall be open, except on such occasions as, in the opinion of the house, may require secrecy.

§14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

§15. Bills may originate in either house, and be amended, altered, or rejected by the other; but no bill shall have the force of law until on three several days it be read in each house, and free discussion be allowed thereon, unless, in case of urgency, four-fifths of the house in which the bill shall be pending may deem it expedient to dispense with this rule. And every bill having passed both houses, shall be signed by the speaker and president of their respective houses; *Provided*, that all bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject them as other bills.

§16. Every bill or resolution having the force of law, to which the concurrence of both houses of the general assembly may be necessary, except on a question of adjournment, which shall have passed both houses, shall be presented to the governor, and if he approve, he shall sign it; if not, he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large on the journals, and proceed to reconsider it. If, after such reconsideration, a majority of the whole number of members of that house shall agree to pass it, it shall be sent, together with the objections, to the other house, by which it shall be reconsidered, and if approved by a majority of the whole number of members of that house, it shall have the same effect as if it had been signed by the governor; but in all such cases the votes of both houses shall be taken by yeas and nays, and the names of the persons voting for and against the bill or resolution shall be entered on the journals of both houses respectively. If the bill or resolution shall not be returned by the governor within five days (Sundays excepted) after it shall have been presented to him, it shall have the same force and effect as if he had signed it, unless the general assembly, by its adjournment, prevent its return, in which case it shall not be a law.

§17. Every order, resolution or vote, to which the concurrence of both houses may be necessary (except on questions of adjournment, and for bringing on elections by the two houses), shall be presented to the governor, and before it shall take effect, be approved by him, or being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in the case of bills.

§18. Each member of the general assembly shall receive from the public treasury such compensation for his services as may be prescribed by law; but no increase of compensation shall take effect during the session at which such increase shall have been made.

§19. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such office as may be filled by election by the people.

§20. No person who holds any lucrative office under the United States, or under this State or any other State, or government (except postmasters, officers in the militia, to whose office no annual salary is attached, justices of the peace, members of the court of county commissioners, notaries public,

and commissioners of deeds); no person who has been convicted of having given or offered any bribe to procure his election to any office; no person who has been convicted of bribery, forgery, perjury or other high crime or misdemeanor, which may be by law declared to disqualify him; and no person who has been a collector or holder of any public moneys, and has failed to account for and pay over to the treasury all sums for which he may be by law accountable, shall be eligible to the general assembly.

§21. The general assembly shall meet annually, on such day as may be by law prescribed; and shall not remain in session longer than thirty days, except by a vote of two-thirds of each house.

§22. In all elections by the general assembly, the members shall vote viva voce, and the votes shall be entered on the journals.

§23. All state officers may be impeached for any misdemeanor in office, but judgment shall not extend further than removal from office, and disqualification to hold office, under the authority of this State. The party impeached, whether convicted or not, shall be liable to indictment, trial and judgment, according to law.

§24. The house of representatives shall have the sole power of preferring impeachment. All impeachments shall be tried by the senate; the senators, when sitting for that purpose, shall be on oath or affirmation; and no person shall be convicted under an impeachment without the concurrence of two-thirds of the senators present.

§25. It shall be the duty of the general assembly to pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by the parties who may choose that mode of adjustment.

§26. It shall be the duty of the general assembly, from time to time, as circumstances may require, to frame and adopt a penal code, founded on principles of reformation.

§27. It shall be the duty of the general assembly, within five years after the adoption of this Constitution, and within every subsequent period of ten years, to make provision by law for the revision, digesting and promulgation of all the public statutes of this State, both civil and criminal.

§28. The general assembly shall have power to pass such penal laws as they may deem expedient to suppress the evil practice of dueling.

§29. It shall be the duty of the general assembly to regulate by law the cases in which deduction shall be made from the salaries of public officers for neglect of duty in their official capacities, and the amount of such deductions.

§30. Divorces from the bonds of matrimony shall not be granted but in the cases by law provided for, and by suit in chancery; but decisions in chancery for divorce shall be final, unless appealed from in the manner prescribed by law, within three months of the date of the enrollment thereof.

§31. No money shall be drawn from the treasury but in pursuance of an appropriation made by law; and a regular statement and account of the receipts and expenditures of all public moneys shall be published annually, in such manner as may be by law directed.

§32. The general assembly shall not borrow or raise money on the credit of this State, except for purposes of military defense against actual or threatened invasion, rebellion or insurrection, without the concurrence of two-thirds of the members of each house; nor shall the debts or liabilities of any corporation, person or persons, or other states, be guaranteed, nor any money, credit or other thing be loaned or given away, except by a like concurrence of each house; and the votes shall, in each case, be taken by the yeas and nays and be entered on the journals.

§33. The State shall not engage in works of internal improvement; but its credit in aid of such may be pledged by the general assembly on undoubted security, by a vote of two-thirds of each house of the general assembly.

§34. It shall be the duty of the general assembly to make adequate provisions in each county for the maintenance of the poor of this State.

§35. Any citizen of this State who shall, after the adoption of this Constitution, either in or out of this State, fight a duel with deadly weapons, or send or accept a challenge so to do, or act as a second, or knowingly aid or assist in any manner those thus offending, shall be incapable of holding any office under this State.

§36. The general assembly shall not have power to authorize any municipal corporation to pass any laws contrary to the general laws of this State, nor to levy a tax on real and personal property to a greater extent than two per centum of the assessed value of such property.

§37. In the event of annexation of any foreign territory to this State, the general assembly shall enact laws extending to the inhabitants of the acquired territory all the rights and privileges which may be required by the terms of the acquisition, anything in this Constitution to the contrary notwithstanding.

ARTICLE V.

EXECUTIVE DEPARTMENT.

§1. The executive department shall consist of a governor, lieutenant-governor, secretary of state, auditor, treasurer and attorney-general, who shall be chosen by the electors of the State, at the time and places at which they shall vote for representatives.

§2. The governor, lieutenant-governor, secretary of state, treasurer and attorney-general shall hold their offices for the term of two years, and the auditor for the term of four years.

§3. The returns of every election for the officers named in the preceding section shall be sealed up and transmitted to the seat of government, by the returning-officers, directed to the presiding officer of the senate, who, during the first week of the session, shall open and publish the same in the presence of a majority of the members of the general assembly; the person having the highest number of votes shall be declared duly elected, but if two or more shall be highest and equal in votes for the same office, one of them shall be chosen by the joint vote of both houses. Contested elections for executive officers shall be determined by both houses of the general assembly, and in such manner as shall be prescribed by law.

§4. The supreme executive power of this State shall be vested in the governor.

§5. He shall take care that the laws are faithfully executed.

§6. He may require information in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

§7. He shall communicate at every session by message to the general assembly, the condition of the State, and recommend such measures as he shall deem expedient.

§8. He may, on extraordinary occasions, convene the general assembly by proclamation, and shall state to both houses, when assembled, the purposes for which they have been convened.

§9. In case of disagreement between the two houses in respect to the time of adjournment, he shall have power to adjourn the general assembly to such time as he may think proper, but not beyond the regular meetings thereof.

§10. He shall be commander-in-chief of the military and naval forces of the State, except when they shall be called into the service of the United States.

§11. He shall have power, after conviction, to grant reprieves, commutations and pardons for all offenses (except treason and cases of impeachment), upon such conditions as he may think proper, subject, however, to such regulations as to the manner of applying for pardons as may be prescribed by

law; but such pardons shall not relieve from civil or political disability. Upon conviction of treason, he may suspend the execution of the sentence, and report the same to the general assembly at the next meeting, when the general assembly shall either pardon, commute the sentence, direct its execution, or grant further reprieve. He shall communicate to the general assembly, at every regular session, each case of reprieve, commutation, or pardon granted, stating the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon or reprieve, with his reasons therefor.

§12. There shall be a great seal of the State, which shall be kept and used by the governor officially, and the seal heretofore in use shall continue to be the great seal of the State until another shall have been adopted by the general assembly.

§13. All grants and commissions shall be issued in the name and by the authority of the State of Alabama, sealed with the great seal, signed by the governor, and countersigned by the secretary of state.

§14. No member of congress, or other person, holding office under the authority of this State, or of the United States, shall execute the office of governor, except as herein provided.

§15. In case of the death, impeachment, resignation, removal or other disability of the governor, the powers and duties of the office, for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the lieutenant-governor.

§16. The lieutenant-governor shall be president of the senate, but shall vote only when the senate is equally divided, and in case of his absence or impeachment, or when he shall exercise the office of governor, the senate shall choose a president pro tempore.

§17. If the lieutenant-governor, while executing the office of governor, shall be impeached, displaced, resign or die, or otherwise become incapable of performing the duties of the office, the president of the senate shall act as governor until the vacancy is filled or the disability removed; and if the president of the senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of governor, the same shall devolve upon the speaker of the house of representatives.

§18. Should the office of secretary of state, auditor, treasurer or attorney-general become vacant from any of the causes specified in the fifteenth section of this article, the governor shall fill the vacancy until the disability is removed or a successor elected and qualified. Every such vacancy shall be filled by election at the first general election that occurs more than thirty days after it shall have occurred, and the person chosen shall hold the office for the full term fixed in the second section of this article.

§19. The officers mentioned in this article shall, at stated times, receive for their services a compensation to be established by law, which shall neither be increased or diminished during the period for which they shall have been elected.

§20. The officers of the executive department and of the public institutions of the State, shall at least five days preceding each regular session of the general assembly, severally report to the governor, who shall transmit such reports, with his message, to the general assembly.

§21. A sheriff shall be elected in each county, by the qualified electors thereof, who shall hold his office for the term of three years, unless sooner removed, and shall not be eligible to serve either as principal or deputy for any two successive terms. Vacancies in the office of sheriff shall be filled by the governor, as in other cases; and the person appointed shall continue in office until the next general election in the county for sheriff, as by law provided.

ARTICLE VI.

JUDICIAL DEPARTMENT.

§1. The judicial power of the State shall be vested in the senate, sitting as a court of impeachment, a supreme court, circuit courts, chancery courts, courts of probate, such inferior courts of law and equity, to consist of not more than five members, as the general assembly may from time to time establish, and such persons as may be by law invested with powers of a judicial nature.

§2. Except in cases otherwise directed in the Constitution, the supreme court shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may from time to time be prescribed by law; *Provided*, that said court shall have power to issue writs of injunction, mandamus, habeas corpus, quo warranto, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions.

§3. The supreme court shall be held at the seat of government, but if that shall have become dangerous from an enemy, or from disease, it may adjourn to a different place.

§4. The State shall be divided by the general assembly into convenient circuits, each of which shall contain not less than three nor more than eight counties; and for each circuit there shall be chosen a judge, who shall, after his election or appointment, reside in the circuit for which he shall have been chosen.

§5. The circuit court shall have original jurisdiction in all matters, civil and criminal, within the State, not otherwise excepted in the Constitution, but in civil cases only when the matter or sum in controversy exceeds fifty dollars; *Provided*, *however*, that the circuit court shall have equity jurisdiction concurrent with the courts of chancery in all cases for divorce, and cases in which the value of the matter in controversy does not exceed the sum of five thousand dollars.

§6. A circuit court shall be held in each county in the State at least twice in every year, and the judges of the several circuits may hold courts for each other, when they deem it expedient, and shall do so when directed by law; *Provided*, that the judges of the several circuit courts shall have power to issue writs of injunction returnable into courts of chancery.

§7. The general assembly shall have power to establish a court or courts of chancery, with original and appellate jurisdiction. The State shall be divided by the general assembly into convenient chancery divisions, and the divisions into districts; and for each division there shall be a chancellor, who shall, after his election or appointment, reside in the division for which he shall have been elected or appointed.

§8. A chancery court shall be held in each county at a place therein to be fixed by law, and the chancellors may hold courts for each other, when they deem it expedient.

§9. The general assembly shall have power to establish in each county within the State a court of probate, with general jurisdiction for the granting of letters testamentary and of administration, and for orphans' business; and the general assembly may confer on the said courts jurisdiction of contracts for labor, and order frequent sessions for that purpose.

§10. The judges of the supreme court, circuit courts, and courts of chancery shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites, nor hold any office (except judicial offices) of profit or trust under the State or the United States, during the term for which they have been elected, nor under any other power during their continuance in office.

§11. Judges of the supreme court, and chancellors, judges of the circuit and probate courts, and of such other inferior courts as may be by law established, shall be elected by the qualified electors of the respective counties, cities, towns, or districts, for which said courts may be established, on the Tuesday after the first Monday in November of each year, or such other day as may be by law prescribed. Vacancies in the office of the circuit judge, judge of probate, or judge of any other inferior court established by law, shall be filled by the governor; and the person appointed by him shall hold office until the next election day appointed by law for election of judge, and until his successor shall have been elected and qualified.

§12. The judges of the several courts of this State shall hold their office for the term of six years; and the right of any judge to hold his office for the full term hereby prescribed shall not be affected by any change hereafter made by law in any circuit or district, or in the mode or time of election; but for any willful neglect of duty, or any other reasonable cause which shall not be a sufficient ground of impeachment, the governor shall remove any judge, on the address of two-thirds of each house of the general assembly; *Provided*, that the cause or causes for which said removal may be required, shall be stated at length in such address, and entered on the journals of each house; *And provided further*, that the judge intended to be removed shall be notified of such cause or causes, and shall be admitted to a hearing in his own defense, before any vote for such address; and in all such cases the vote shall be taken by yeas and nays, and be entered on the journal of each house respectively.

§13. A competent number of justices and constables shall be elected in and for each county by the qualified electors thereof, who shall hold office during such terms as may be prescribed by law. Said justices shall have jurisdiction in all civil cases wherein the amount in controversy does not exceed one hundred dollars. In all cases tried before such justices the right of appeal shall be secured by law; *Provided*, that notaries public appointed according to law shall be authorized and required to exercise throughout their respective counties all the powers and jurisdiction of justices of the peace.

§14. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the State; as also the judges of the circuit courts within their respective circuits; and the judges of the inferior courts within their respective counties.

§15. The clerk of the supreme court shall be appointed by the judges thereof; registers in chancery, by the chancellors of the divisions; and all the clerks and registers so appointed shall be removed by the appointing power, for cause to be placed on the records of the court.

§16. The attorney-general shall reside at the seat of government, and shall be the law officer of the State. During the session of the general assembly he shall furnish to the committees of either house, when required, drafts of bills and written opinions upon any matter under consideration of the committees, and shall perform such other duties as may be required of him by law.

§17. A solicitor shall be elected in each county in this State by the qualified electors of such county, who shall reside in the county for which he is elected, and perform such duties as may be required of him by law. He shall hold office for a term of four years, and in case of vacancy shall be filled by the judge of the circuit until his successor is elected and qualified.

§18. Clerks of the circuit court, and such inferior courts as may be by law established, shall be elected by the qualified electors in each county, for the term of six years, and may be removed from office for cause, and in such manner as may be by law prescribed. Vacancies in the office of clerk shall be filled by the judge of the court, until the next general election, and until a successor shall be elected and qualified; *Provided*, that the general assembly shall have power to annex the duties of clerk to the office of judge of any of the inferior courts by law established.

§19. The style of all processes shall be "The State of Alabama," and all prosecutions shall be carried on in the name and by the authority of the State of Alabama, and shall conclude, "against the peace and dignity of the same."

ARTICLE VII.

ELECTIONS.

§1. In all elections by the people, the electors shall vote by ballot.

§2. Every male person, born in the United States, and every male person who has been naturalized, or who has legally declared his intention to become a citizen of the United States, twenty-one years old or upward, who shall have resided in this State six months next preceding the election, and three months in the county in which he offers to vote, except as hereinafter provided, shall be deemed an elector; *Provided*, that no soldier, or sailor, or marine in the military or naval service of the United States, shall hereafter acquire a residence by reason of being stationed on duty in this State.

§3. It shall be the duty of the general assembly to provide, from time to time, for the registration of all electors; but the following classes of persons shall not be permitted to register, vote, or hold office: 1st. Those who, during the late rebellion, inflicted, or caused to be inflicted, any cruel or unusual punishment upon any soldier, sailor, marine, employe or citizen of the United States, or who, in any other way, violated the rules of civilized warfare. 2d. Those who may be disqualified from holding office by the proposed amendment of the Constitution of the United States, known as "Article XIV.," and those who have been disqualified from registering to vote for delegates to the convention to frame a Constitution for the State of Alabama, under the act of congress "to provide for the more efficient government of the rebel states," passed by congress, March 2, 1867, and the acts supplementary thereto, except such persons as aided in the reconstruction proposed by congress, and accept the political equality of all men before the law; *Provided*, that the general assembly shall have power to remove the disabilities incurred under this clause. 3d. Those who shall have been convicted of treason, embezzlement of public funds, malfeasance in office, crime punishable by law with imprisonment in the penitentiary, or bribery. 4th. Those who are idiots or insane.

§4. All persons, before registering, must take and subscribe the following oath: "I, —— ——, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of the State of Alabama; that I am not excluded from registering by any of the clauses in Section 3, Article VII. of the Constitution of the State of Alabama; that I will never countenance or aid in the secession of this State from the United States; that I accept the civil and political equality of all men; and agree not to attempt to deprive any person or persons, on account of race, color, or previous condition, of any political or civil right, privilege, or immunity, enjoyed by any other class of men; and furthermore, that I will not in any way injure, or countenance in others any attempt to injure any person or persons, on account of past or present support of the government of the United States, the laws of the United States, or the principle of the political and civil equality of all men, or for affiliation with any political party."

§5. Electors shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest and civil process, during their attendance at elections, and in going to and returning from the same.

§6. It shall be the duty of the general assembly to enact adequate laws giving protection against the evils arising from the use of intoxicating liquors at elections.

§7. Returns of elections for all civil officers elected by the people, who are to be commissioned by the governor, and also for the members of the general assembly, shall be made to the secretary of state.

ARTICLE VIII.

REPRESENTATION.

§1. The house of representatives shall consist of not more than one hundred members, who shall be apportioned by the general assembly among the several counties of the State according to the number of inhabitants in them respectively; and, to this end, the general assembly shall cause an enumeration of all the inhabitants of the State to be made in the year 1875, and every ten years thereafter, and shall make an apportionment of the representatives among the several counties at the first regular session after each enumeration; which apportionment, when made, shall not be subject to alteration, until after the next census shall have been taken; *Provided*, that each county shall be entitled to at least one representative; *And provided further*, that when two or more adjoining counties shall each have a residuum, or fraction over and above the ratio then fixed by law, which fractions, when added together, equal, or exceed that ratio, in that case the county having the largest fraction shall be entitled to one additional representative.

§2. Until the general assembly shall make an apportionment of the representatives among the several counties, after the first enumeration made as herein provided, the counties of Autauga, Baldwin, Bibb, Blount, Butler, Calhoun, Clay, Clarke, Cherokee, Cleburne, Crenshaw, Choctaw, Coffee, Conecuh, Coosa, Covington, Dale, DeKalb, Elmore, Fayette, Henry, Jefferson, Lauderdale, Limestone, Marshall, Marion, Monroe, Morgan, Pike, Randolph, St. Clair, Shelby, Walker, Washington and Winston, shall have one representative each; the counties of Chambers, Franklin, Greene, Hale, Jackson, Lee, Lawrence, Macon, Pickens, Russell, Talladega, Tallapoosa and Tuscaloosa, shall be entitled to two representatives each; the counties of Barbour, Bullock, Lowndes, Madison, Marengo, Perry, Sumter and Wilcox, shall be entitled to three representatives each; the counties of Dallas, Mobile and Montgomery, shall be entitled to five representatives each; *Provided*, that in the formation of new counties the general assembly may apportion to each its proper representation.

§3. The whole number of senators shall be not less than one-fourth, or more than one-third of the whole number of representatives; and it shall be the duty of the general assembly, at its first session after the making of each enumeration, as provided by section first, of this article, to fix by law the number of senators, and to divide the State into as many senatorial districts as there are senators; which districts shall be as nearly equal to each other as may be in the number of inhabitants, and each shall be entitled to one senator, and no more; *Provided*, that no county shall be divided, and no two or more counties, which are separated entirely by a county belonging to another district, shall be joined in one district; *And provided further*, that the senatorial districts, when formed, shall not be changed until after the next enumeration shall have been taken.

§4. At the first general election after each new apportionment, elections shall be held anew in all the senatorial districts. The senators elected when convened at the next ensuing session of the general assembly, shall be divided by lot into two classes, as nearly equal as may be; the seats of the senators of the first class shall be vacated at the expiration of two years, and those of the second class at the expiration of four years, from the day of election, so that (except as above provided) one-half of the senators may be chosen biennially.

§5. Until the general assembly shall divide the State into senatorial districts as herein provided, the senatorial districts shall remain as follows: First district, Limestone and Lauderdale; second, Franklin and Lawrence; third, Morgan, Blount, Winston and Marion; fourth, Madison; fifth, Jackson, Marshall and DeKalb; sixth, Cherokee and Calhoun; seventh, Walker, Jefferson and St. Clair; eighth, Shelby and Bibb; ninth, Tuscaloosa and

Fayette; tenth, Talladega and Clay; eleventh, Chambers, Randolph and Cleburne; twelfth, Coosa and Tallapoosa; thirteenth, Lee; fourteenth, Macon; fifteenth, Russell; sixteenth, Bullock; seventeenth, Barbour; eighteenth, Autauga and Elmore; nineteenth, Montgomery; twentieth, Lowndes; twenty-first, Dallas; twenty-second, Perry; twenty-third, Hale; twenty-fourth, Greene and Pickens; twenty-fifth, Sumter; twenty-sixth, Marengo; twenty-seventh, Choctaw, Clarke and Washington; twenty-eighth, Mobile; twenty-ninth, Monroe and Baldwin; thirtieth, Wilcox; thirty-first, Butler and Conecuh; thirty-second, Covington, Crenshaw and Pike; thirty-third, Coffee, Dale and Henry.

§6. Until a new apportionment of representatives to the congress of the United States shall have been made, the congressional districts shall remain as stated in the Revised Code of Alabama, and after each new apportionment, the general assembly shall divide the State into as many districts as it is allowed representatives in congress, making such congressional districts as nearly equal in the number of inhabitants as may be.

ARTICLE IX.

TAXATION.

§1. All taxes levied on property in this State, shall be assessed in exact proportion to the value of such property; *Provided, however*, that the general assembly may levy a poll-tax not to exceed one dollar and fifty cents on each poll, which shall be applied exclusively in aid of the public-school fund.

§2. No power to levy taxes shall be delegated to individuals or private corporations

ARTICLE X.

MILITIA.

§1. All able-bodied male inhabitants of this State, between the ages of eighteen years and forty-five years, who are citizens of the United States, or who have declared their intention to become citizens of the United States, shall be liable to military duty in the militia of this State; but all citizens of any denomination whatever, who, from scruples of conscience, may be averse to bearing arms, shall be exempt therefrom upon such conditions as may be prescribed by law.

§2. The general assembly shall provide for the organizing, arming, equipping and discipline of the militia, and for paying the same, when called into service, in such manner as it shall deem expedient, not incompatible with the laws of the United States.

§3. Officers of the militia shall be elected or appointed and commissioned in such manner as may be provided by the general assembly.

§4. The governor shall be commander-in-chief of the army and navy of this State, and of the militia, except when called into the service of the United States, and shall have power to call forth the militia to execute the laws, to suppress riots or insurrections, and to repel invasion.

§5. The governor shall nominate, and by and with the consent of the senate, appoint one major-general and three brigadier-generals; the adjutant-general, and other staff-officers to the commander-in-chief, shall be appointed by the governor, and their commissions shall expire with the governor's term of service. No commissioned officer shall be removed from office, except by the senate, on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the decision of a court martial pursuant to law

§6. The militia may be divided into two classes, to be designated as "volunteer militia" and "reserve militia," in such manner as shall be provided by law.

§7. The militia shall, in all cases, except felony, treason, or breach of the peace, be privileged from arrest during their attendance at musters and elections of officers, and in going to and returning from the same.

§8. The officers and men commissioned and organized, shall not be entitled to, or receive any pay, rations, or emoluments, when not in active service.

ARTICLE XI.

EDUCATION.

§1. The common schools, and other educational institutions of this State, shall be under the management of a board of education, consisting of a superintendent of public instruction and two members from each congressional district.

The governor of the State shall be ex-officio a member of the board, but shall have no vote in its proceedings.

§2. The superintendent of public instruction shall be president of the board of education, and have the casting vote in case of a tie; he shall have the supervision of the public schools of the State, and perform such other duties as may be imposed upon him by the board and the laws of the State. He shall be elected in the same manner and for the same term as the governor of the State, and receive such salary as may be fixed by law. An office shall be assigned him in the capitol of the State.

§3. The members of the board shall hold office for a term of four years, and until their successors shall be elected and qualified. After the first election under the Constitution, the board shall be divided into two equal classes, so that each class shall consist of one member from each district. The seats of the first class shall be vacated at the expiration of two years from the day of election, so that one-half may be chosen biennially.

§4. The members of the board of education, except the superintendent, shall be elected by the qualified electors of the congressional districts in which they are chosen, at the same time and in the same manner as the members of congress.

§5. The board of education shall exercise full legislative powers in reference to the public educational institutions of the State, and its acts, when approved by the governor, or when re-enacted by two-thirds of the board, in case of his disapproval, shall have the force and effect of law, unless repealed by the general assembly.

§6. It shall be the duty of the board to establish, throughout the State, in each township, or other school district which it may have created, one or more schools at which all the children of the State, between the ages of five and twenty-one years, may attend free of charge.

§7. No rule or law affecting the general interest of education shall be made by the board without the concurrence of a majority of its members. The style of the acts of the board shall be, "Be it enacted by the Board of Education of the State of Alabama."

§8. The board of education shall be a body politic and corporate, by the name and style of "The Board of Education of the State of Alabama." Said board shall also be a board of regents of the State University, and when sitting as a board of regents of the University, shall have power to appoint the president and the faculties thereof.

The president of the University shall be ex-officio a member of the board of regents, but shall have no vote in its proceedings.

§9. The board of education shall meet annually at the seat of government at the same time as the general assembly, but no session shall continue longer than twenty days, nor shall more than one session be held in the same year, unless authorized by the governor. The members shall receive the same mileage and daily pay as the members of the general assembly.

§10. The proceeds of all lands that have been or may be granted by the United States to the State for educational purposes; of the swamp lands; and of all lands or other property given by individuals or appropriated by the State for like purposes; and of all estates of deceased persons who have died

without leaving a will or heir; and all moneys which may be paid as an equivalent for exemption from military duty, shall be and remain a perpetual fund, which may be increased, but not diminished; and the interest and income which, together with the rents of all such lands as may remain unsold, and such other means as the general assembly may provide, shall be inviolably appropriated to educational purposes, and to no other purpose whatever.

§11. In addition to the amount accruing from the above sources, one-fifth of the aggregate annual revenue of the State shall be devoted exclusively to the maintenance of public schools.

§12. The general assembly may give power to the authorities of the school districts to levy a poll-tax on the inhabitants of the district in aid of the general school fund, and for no other purpose.

§13. The general assembly shall levy a specific annual tax upon all railroad, navigation, banking, and insurance corporations, and upon all insurance and foreign bank and exchange agencies, and upon the profits of foreign bank-bills issued in this State, by any corporation, partnership, or persons, which shall be exclusively devoted to the maintenance of public schools.

§14. The general assembly shall, as soon as practicable, provide for the establishment of an agricultural college, and shall appropriate the two hundred and forty thousand acres of land donated to this State for the support of such a college, by the act of congress passed July 2, 1862, or the money or scrip, as the case may be, arising from the sale of said land, or any lands which may hereafter be granted, or appropriated for such purpose, for the support and maintenance of such college or schools, and may make the same a branch of the University of Alabama for instruction in agriculture, in the mechanic arts, and the natural sciences connected therewith, and place the same under the supervision of the regents of the University.

ARTICLE XII.

INDUSTRIAL RESOURCES.

§1. A bureau of industrial resources shall be established, to be under the management of a commissioner, who shall be elected at the first general election, and shall hold his office for the term of four years.

§2. The commissioner of industrial resources shall collect and condense statistical information concerning the productive industries of the State; and shall make, or cause to be made, a careful, accurate and thorough report upon the agriculture and geology of the State, and annually report such additions as the progress of scientific development and extended explorations may require. He shall, from time to time, disseminate among the people of the State such knowledge as he may deem important, concerning improved machinery and production, and for the promotion of their agricultural, manufacturing, and mining interests; and shall send out to the people of the United States and foreign countries, such reports concerning the industrial resources of Alabama, as may best make known the advantages offered by the State to emigrants; and shall perform such other duties as the general assembly may require.

§3. It shall be the duty of the general assembly, at the first session after the adoption of this Constitution, to pass such laws and regulations as may be necessary for the government and protection of this bureau, and also to fix and provide for the compensation of the commissioner.

§4. This bureau shall be located, and the commissioner shall reside at the capital of the State, and he shall annually make a written or printed report to the governor of the State, to be laid before the general assembly at each session.

§5. In case of the death, removal or resignation of the commissioner, the governor, with the approval of the senate, shall have power to appoint a commissioner for the unexpired term.

ARTICLE XIII.

CORPORATIONS.

§1. Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes. All general laws and special acts passed pursuant to this section, may be altered, amended or repealed.

§2. Dues from corporations shall be secured by such individual liabilities of the corporators or other means as may be prescribed by law.

§3. Each stockholder in any corporation shall be liable to the amount of stock held or owned by him.

§4. The property of corporations now existing, or hereafter created, shall forever be subject to taxation, the same as property of individuals, except corporations for educational and charitable purposes.

§5. No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money or secured by a deposit of money to the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury of twelve men, in a court of record, as shall be prescribed by law.

§6. The general assembly shall not have power to establish or incorporate any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit or bills payable to order or bearer, except under the conditions prescribed in this Constitution.

§7. No bank shall be established, otherwise than under a general banking law, as provided in the first section of this article.

§8. The general assembly may enact a general banking law, which law shall provide for the registry and countersigning by the governor of the State, of all paper credit designed to be created as money; and ample collateral security, convertible into specie, or the redemption of the same in gold or silver, shall be required, and such collateral security shall be under the control of such officer or officers as may be prescribed by law.

§9. All bills or notes issued as money, shall be, at all times, redeemable in gold or silver, and no law shall be passed, sanctioning, directly or indirectly, the suspension, by any bank or banking company, of specie payment.

§10. Holders of bank-notes shall be entitled, in case of insolvency, to preference of payment over all other creditors.

§11. Every bank or banking company shall be required to cease all banking operations within twenty years from the time of its organization, and promptly thereafter close its business.

§12. No bank shall receive directly or indirectly, a greater rate of interest than shall be allowed by law to individuals for lending money.

§13. The State shall not be a stockholder in any bank, nor shall the credit of the State ever be given or lent to any banking company, association or corporation, except for the purpose of expediting the construction of railroads, or works of internal improvement, within this State, and the credit of the State shall, in no case, be given or lent without the approval of two-thirds of both houses of the general assembly.

§14. All corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases as natural persons.

§15. It shall be the duty of the general assembly to provide for the organization of cities, and incorporated towns, and to restrict their power of taxation, assessment and contracting of debt.

ARTICLE XIV.

EXEMPTED PROPERTY.

§1. The personal property of any resident of this State to the value of one thousand dollars, to be selected by such resident, shall be exempted from

sale on execution, or other final process of any court, issued for the collection of any debt contracted after the adoption of this Constitution.

§2. Every homestead, not exceeding eighty acres of land, and the dwelling and appurtenances thereon, to be selected by the owner thereof, and not in any town, city, or village, or in lieu thereof, at the option of the owner, any lot in the city, town, or village, with the dwelling and appurtenances thereon, owned and occupied by any resident of this State, and not exceeding the value of two thousand dollars, shall be exempted from sale, on execution, or any other final process from a court, from any debt contracted after the adoption of this Constitution. Such exemption, however, shall not extend to any mortgage lawfully obtained, but such mortgage or other alienation of such homestead, by the owner thereof, if a married man, shall not be valid without the voluntary signature and assent of the wife of the same.

§3. The homestead of a family, after the death of the owner thereof, shall be exempt from the payment of any debts contracted after the adoption of this Constitution, in all cases during the minority of the children.

§4. The provisions of sections one and two of this article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming such exemption, or a mechanic's lien for work done on the premises.

§5. If the owner of a homestead die, leaving a widow, but no children, the same shall be exempt, and the rents and profits thereof shall enure to her benefit.

§6. The real and personal property of any female in this State, acquired before marriage, and all property, real and personal, to which she may afterwards be entitled by gift, grant, inheritance, or devise, shall be and remain the separate estate and property of such female, and shall not be liable for any debts, obligations, and engagements of her husband, and may be devised or bequeathed by her, the same as if she were a femme sole.

ARTICLE XV.

OATH OF OFFICE.

§1. All civil officers of this State, legislative, executive and judicial, before they enter upon the execution of the duties of their respective offices, shall take the following oath:

"I, ——— ———, do solemnly swear (or affirm) that I am not disfranchised by the Constitution of Alabama, or by the Constitution or laws of the United States; that I will honestly and faithfully support and defend the Constitution and laws of the United States, the union of the states, and the Constitution and laws of the State of Alabama, so long as I remain a citizen thereof; and that I will honestly and faithfully discharge the duties of the office upon which I am about to enter to the best of my ability. So help me God."

ARTICLE XVI.

AMENDMENTS TO THE CONSTITUTION.

§1. The general assembly, whenever two-thirds of each house shall deem it necessary, may propose amendments to this Constitution, which proposed amendments shall be duly published in print, at least three months before the next general election of representatives, for the consideration of the people, and it shall be the duty of the several returning-officers, at the next general election which shall be held for representatives, to open a poll for, and make a return to the secretary of state for the time being, of the names of all those voting for representatives who have voted on such proposed amendments, and if thereupon it shall appear that a majority of all the citizens of the State, voting for representatives, have voted in favor of such proposed amendments, and two-thirds of each house of the next general assembly shall, after such an election, and before another, ratify the same

amendments by yeas and nays, they shall be valid, to all intents and purposes, as parts of the Constitution; *Provided*, that the said proposed amendments shall, at each of the said sessions, have been read three times, on three several days, in each house.

After the expiration of three months from the adoption of this Constitution, no convention shall be held for the purpose of altering or amending the Constitution of this State, unless the question of convention or no convention shall be first submitted to a vote of all the electors, twenty-one years of age and upwards, and approved by a majority of the electors voting at said election.

E. W. PECK, *President.*

ROBERT BARBER, *Secretary.*

A. J. APPLEGATE,	THOMAS ADAMS,
W. A. AUSTIN,	B. ALEXANDER,
J. H. AUTREY,	D. H. BINGHAM,
W. T. BLACKFORD,	A. BINGHAM,
M. D. BRAINARD,	SAM. BLANDON,
W. M. BUCKLEY,	A. E. BUCK,
J. H. BURDICK,	C. W. BUCKLEY,
J. CARRAWAY,	P. BURTON,
J. COLLINS,	D. E. COON,
J. H. DAVIS,	THOMAS DIGGS,
G. J. DYKES,	GEORGE ELY,
P. FINDLEY,	S. S. GARDNER,
W. C. GARRISON,	O. GREGORY,
J. K. GREENE,	A. GRIFFIN,
J. M. HATCHER,	T. HAUGHEY,
C. HAYES,	B. INGE,
W. JOHNSON,	A. W. JONES,
C. JONES,	J. C. KEFFER,
S. F. KENNAMER,	TOM LEE,
D. LORE,	H. MCGOWN,
J. MAHAN,	J. W. MCLEOD,
B. O. MASTERSON,	J. J. MARTIN,
S. MOORE,	C. A. MILLER,
J. F. MORTON,	A. L. MORGAN,
T. M. PETERS,	B. W. NORRIS,
H. C. RUSSELL,	J. T. RAPIER,
J. SILSBY,	B. F. SAFFOLD,
L. R. SMITH,	WM. SKINNER,
H. J. SPRINGFIELD,	C. L. STEED,
J. P. STOW,	L. B. STRANGE,
W. A. WALKER,	C. O. WHITNEY,
J. R. WALKER,	J. W. WILHITE,
J. A. YORDY,	R. M. REYNOLDS,
N. D. STANWOOD,	G. P. PLOWMAN.

Vote for the Constitution, 70,812; against it, 79,566.

"I deem it only necessary to say here that, from all the evidence I could procure—and I caused the most thorough investigation to be made—the Constitution was fairly rejected by the people, under the law requiring a majority of the registered voters to cast their ballots for or against."—*Major-General Meade's Report, October 31, 1868.*

"In Alabama, the Constitution was submitted to the people, and although, in the opinion of General Meade, it was rejected by the people, it was adopted by Congress."—*Report of Secretary of War, November 20, 1868.*

What is called the Constitution of 1868, became operative June 25, 1868.—*Irwin, Ex'r, v. Mayor, Aldermen and Common Council of Mobile, December Term of Supreme Court of Alabama, 1876*, 57 Ala. 6. The Constitutional Convention of 1875 fixed the time at the 13th July, 1868, the day of usurpation; and it seems to be true that the validity of a *de facto* government cannot antedate the time of its becoming *de facto*.

[Note from Code of 1876.]

CONSTITUTION OF THE STATE OF ALABAMA. 1875.*

PREAMBLE.

WE, THE PEOPLE of the State of Alabama, in order to establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure to ourselves and to our posterity life, liberty, and property; profoundly grateful to Almighty God for this inestimable right, and invoking His favor and guidance, do ordain and establish the following Constitution and form of government for the State of Alabama.

ARTICLE I.

DECLARATION OF RIGHTS.

That the great, general, and essential principles of liberty and free government may be recognized and established, we declare:—

Effect and office of the declaration of rights.—Ex parte Dorsey, 7 Port. 293.

§1. That all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.

A guarantee to each citizen of all the rights and privileges enjoyed or possessed by any other citizen.—Ex parte Dorsey, 7 Port. 293. Free egress from, or transit through the State may be regulated but not prevented.—Joseph v. Randolph, 71 Ala. 499.

§2. That all persons resident in this State, born in the United States, or naturalized, or who shall have legally declared their intention to become citizens of the United States, are hereby declared citizens of the State of Alabama, possessing equal civil and political rights.

Effect is **to place all persons,** natural and artificial, **on a basis of equality in the courts.**—S. & N. R. Co. v. Morris, 65 Ala. 193; Smith v. L. & N. R. Co., 75 Ala. 449; L. & N. R. Co. v. Baldwin, 85 Ala. 619; Brown v. A. G. S. R. Co., 87 Ala. 370; Randolph v. B. & P. Supply Co., 106 Ala. 501. See also citations to Art. I., Sec. 14; Art. XIV., Sec. 12. There can be no discriminative advantage bestowed by law between the parties to the same suit.—S. & N. R. Co. v. Morris, 65 Ala. 193; Randolph v. B. & P. Supply Co., 106 Ala. 501. The statute against miscegenation is not a denial of equal civil and political rights to the races.—Ford v. State, 53 Ala. 150; Green v. State, 58 Ala. 190 (overruling Burns v. State, 48 Ala. 195); Hoover v. State, 59 Ala. 57; Pace v. State, 69 Ala. 231 (affirmed 106 U. S. 583).

§3. That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and that therefore they have, at all times, an inalienable and indefeasible right to change their form of government, in such manner as they may deem expedient.

The elective franchise is a privilege rather than a right.—Washington v. State, 75 Ala. 582.

§4. That no religion shall be established by law; that no preference shall be given by law to any religious sect, society, denomination, or mode of worship; that no one shall be compelled by law to attend any place of worship, nor to pay any tithes, taxes, or other rate, for building or repairing any place of worship, or for maintaining any minister or ministry; that no

*Became operative December 6th, 1875.

religious test shall be required as a qualification to any office or public trust under this State; and that the civil rights, privileges and capacities of any citizen shall not be in any manner affected by his religious principles.

A Jew has no constitutional right to work on Sunday.—Frolickstein v. Mayor, 40 Ala. 725.

§5. That any citizen may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

§6. That the people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures or searches; and that no warrant shall issue to search any place, or to seize any person or thing, without probable cause, supported by oath or affirmation.

Extent of authority to search the person of a prisoner.—Ex parte Hurn, 92 Ala. 102; Cunningham v. Baker, 104 Ala. 160. **Forbids the issuance of a warrant without probable cause and then on oath or affirmation; arrest may be made without warrant.**—Williams v. State, 44 Ala. 41; Johnson v. State, 82 Ala. 29; Cunningham v. Baker, 104 Ala. 160.

§7. That in all criminal prosecutions the accused has a right to be heard by himself and counsel, or either; to demand the nature and cause of the accusation; to have a copy thereof; to be confronted by the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and, in all prosecutions by indictment, a speedy public trial by an impartial jury of the county or district in which the offense was committed; and that he shall not be compelled to give evidence against himself, nor be deprived of his life, liberty, or property, but by due process of law.

Right of accused to be heard by himself and counsel, or either. A guaranty of the right to be present whenever any action is taken by the prosecution, except a continuance when the accused fails to appear, and the like orders, lying in the discretion of the court.—Ex parte Bryan, 44 Ala. 402; Slocovitch v. State, 46 Ala. 227; and when the verdict is rendered.—State v. Hughes, 2 Ala. 102. Applies to "Mayor's Court."—Withers v. State, 36 Ala. 252. But not to contempt proceedings.—Ex parte Hamilton, 51 Ala. 66. Does not authorize the accused to make a statement of facts outside of the evidence.—State v. McCall, 4 Ala. 643. The court may limit argument of counsel.—Yeldell v. State, 100 Ala. 26; Peagler v. State, 110 Ala. 11. **To demand the nature and cause of the accusation; to have a copy thereof.** Copy is waived if not applied for.—Driskill v. State, 45 Ala. 21; Miller v. State, 45 Ala. 24. Copy from a certified transcript, after change of venue, sufficient.—Bramlett v. State, 31 Ala. 376. **Sufficiency of Code forms of indictment.**—Noles v. State, 24 Ala. 672; Burdine v. State, 25 Ala. 60; Thompson v. State, Ib. 41; Elam v. State, 25 Ala. 53; Sherrod v. State, Ib. 78; Salomon v. State, 27 Ala. 26; Molett v. State, 33 Ala. 408; Aiken v. State, 35 Ala. 399; Schwartz v. State, 37 Ala. 460; Frank v. State, 40 Ala. 12; Miller v. State, 45 Ala. 24; Wesley v. State, 52 Ala. 182; Bradford v. State, 54 Ala. 230; Sandy v. State, 60 Ala. 58; Spigener v. State, 62 Ala. 583; Smith v. State, 63 Ala. 55; McCullough v. State, Ib. 75; Haley v. State, Ib. 89; Tatum v. State, Ib. 147; Phillips v. State, 68 Ala. 469; Billingslea v. State, 68 Ala. 486; Williams v. State, 68 Ala. 551; Ellerson v. State, 69 Ala. 1; Pace v. State, 69 Ala. 231, 106 U. S. 583; Peterson v. State, 74 Ala. 34; Johnson v. State, 75 Ala. 7; Sands v. State, 80 Ala. 201; Bibb v. State, 83 Ala. 84; Bogan v. State, 84 Ala. 449; McGuff v. State, 88 Ala. 147; Linton v. State, Ib. 216; Huffman v. State, 89 Ala. 33; Williams v. State, 91 Ala. 14; Rosson v. State, 92 Ala. 76; Freiburg v. State, 94 Ala. 91; Reeves v. State, 95 Ala. 31; Walker v. State, 96 Ala. 53; Lang v. State, 97 Ala. 41; Watt v. State, Ib. 72; Thompson v. State, 99 Ala. 173; Smith v. State, 103 Ala. 57. **To be confronted by the witnesses against him.** Applies only to courts where facts are inquired into; not to the supreme court.—Phleming v. State, Minor, 42. Applies to impeachments.—State v. Buckley, 54 Ala. 599. Showing of what an absent witness for the State would testify to is inadmissible, without the consent of the defendant; right may be waived.—Rosenbaum v. State, 33 Ala. 354; Wills v. State, 73 Ala. 362. **Where a witness, examined in a former proceeding between the parties, dies, becomes insane, or leaves the State, his former testimony may be proven.**—Long v. Davis, 18 Ala. 801; Marler v. State, 67 Ala. 55; Lowe v. State, 86 Ala. 47; South v. State, 86 Ala. 617; Pruitt v. State, 92 Ala. 41; Thompson v. State, 106 Ala. 67. Dying declarations are excepted.—Green v. State, 66 Ala. 40. In all prosecutions by indictment, **a speedy public trial, etc.** What is a speedy trial.—Ex parte The State, 76 Ala. 482. **Jury must consist of twelve men.**—Collins v. State, 88 Ala. 212. **But may be waived in misdemeanor cases.**—Connelly v. State, 60 Ala. 89. **Must be impartial; opinions as to guilt or innocence of accused.**—

Bales v. State, 63 Ala. 30; Jackson v. State, 77 Ala. 18; Dean v. State, 89 Ala. 46; Hamill v. State, 90 Ala. 577. **Defendant cannot be put on trial under an indictment where the only provision for a jury is that one may be secured on giving bond and appealing.**—Collins v. State, 88 Ala. 212; Reeves v. State, 96 Ala. 33. **Does not apply to contempt cases, impeachment, nor unless the prosecution is by indictment.**—Tims v. State, 26 Ala. 165; Ex parte Hamilton, 51 Ala. 66; State v. Buckley, 54 Ala. 599 **A law giving jurisdiction to either county of an offense committed within a quarter of a mile of the border line,** does not violate.—Hill v. State, 43 Ala. 335; Grogan v. State, 44 Ala. 9; Jackson v. State, 90 Ala. 590. **Accused shall not be compelled to give evidence against himself.** Accused cannot be compelled to say or do anything that may tend to criminate him, and his refusal cannot be proven as a circumstance against him.—Kelly v. State, 72 Ala. 244; Cooper v. State, 86 Ala. 610. **Nor be deprived of life, liberty, or property,** but by due process of law. What is due process.—Ex parte Candee, 48 Ala. 386; Zeigler v. S. & N. R. Co., 58 Ala. 594. **Record must show due process** in a criminal case.—Hood v. State, 44 Ala. 81. **Persons affected must have due notice of judicial proceedings.**—Wilburn v. McCalley, 63 Ala. 436; Mead v. Larkin, 66 Ala. 87; Betancourt v. Eberlin, 71 Ala. 461. **Not contravened by law prohibiting the sale of intoxicants** within limited district.—Dorman v. State, 34 Ala. 216; Barnes v. State, 49 Ala. 342. **Nor the taking of private property for public use;** but legislature cannot convert a private into a public use.—Sadler v. Langham, 34 Ala. 311. **Nor prohibiting the distillation of grain** without the consent of the governor.—Ingram v. State, 39 Ala. 247. **Nor removing administration** from the county of the decedent's residence.—Wright v. Ware, 50 Ala. 549. **Nor establishing stock districts and pounds.**—Dillard v. Webb, 55 Ala. 468. **Nor special private statute for the disposal of property of deceased by administrator.**—Chappell v. Williamson, 49 Ala. 153; Todd v. Flournoy, 56 Ala. 99; Watson v. Oates, 58 Ala. 647; Tindal v. Drake, 60 Ala. 170; Bruce v. Bradshaw, 69 Ala. 360; Mumford v. Pearce, 70 Ala. 452; (since the adoption of the Constitution. Quaere. Art. IV., Sec. 23). **Nor prohibiting the sale or removal of cotton in the seed at certain times, and in particular localities.**—Davis v. State, 68 Ala., 58; Mangan v. State, 76 Ala. 60. **Nor exempting the State from making affidavit and giving bond in attachment.**—Ex parte Macdonald, 76 Ala. 603. **Nor requiring examination and license of locomotive engineers.**—McDonald v. State, 81 Ala. 279. **Contravened by law authorizing toll-gate to be thrown open if road out of repair.**—Powell v. Sammons, 31 Ala. 552. **Making tax deed conclusive, instead of prima facie evidence.**—Stoudenmire v. Brown, 48 Ala. 699; s. c., 57 Ala. 481; Davis v. Minge, 56 Ala. 121; Calhoun v. Fletcher, 63 Ala. 574; Lassiter v. Lee, 68 Ala. 287. **Requiring deposit of money before prosecution or defense of suit by or against purchaser at tax sale.**—Stoudenmire v. Brown, 48 Ala. 699; Whitworth v. Anderson, 54 Ala. 33; Lassiter v. Lee, 68 Ala. 287. **Taxing an attorney's fee as costs against railroad in certain cases.**—S. & N. R. Co. v. Morris, 65 Ala. 193. **Giving filer of mechanic's lien a lien also for an attorney's fee.**—Randolph v. B. & P. Sup. Co., 106 Ala. 501. **Imposing absolute liability on railroad for cattle killed by it under certain conditions.**—Zeigler v. S. & N. R. Co., 58 Ala. 594; B. M. R. Co. v. Parsons, 100 Ala. 662. **Requiring railroad to pay a fee for the examination of its employees for color-blindness.**—L. & N. R. Co. v. Baldwin, 85 Ala. 619. **Declaring conveyances already executed void because not acknowledged according to a then prescribed form.**—Ala. L. I. & T. Co. v. Boykin, 38 Ala. 510.

§8. That no person shall be accused, or arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished, but by virtue of a law established and promulgated prior to the offense, and legally applied.

Law directing nol. pros., and another indictment, when it is seen there will be a variance, is constitutional.—State v. Kreps, 8 Ala. 951. **Law must be promulgated prior to the offense.**—Aaron v. State, 39 Ala. 684; Eliza v. State, 39 Ala. 693. **Unauthorized discharge of the jury** after rendering a void verdict is not a legal application of the law, and is an acquittal.—Grogan v. State, 44 Ala. 9; Bell v. State, 48 Ala. 684; Jackson v. State, 102 Ala. 76; Hayes v. State, 107 Ala. 1.

§9. That no person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the militia and volunteer forces when in actual service, or, by leave of the court, for misfeasance, misdemeanor, extortion and oppression in office, otherwise than is provided in this Constitution. *Provided*, that in cases of petit larceny, assault, assault and battery, affray, unlawful assemblies, vagrancy, and other misdemeanors, the general assembly may, by law, dispense with a grand jury, and authorize such prosecutions and proceedings before justices of the peace, or such other inferior courts as may be by law established.

A guaranty of the right to demand an indictment in all but the excepted cases.—State v. Middleton, 5 Port. 484; Noles v. State, 24 Ala. 672; Thompson v. State, 25 Ala. 41. **No restraint on the mode of drawing and summoning grand jurors.**—Williams v. State, 61 Ala. 33. **Trial in excepted cases** may be had before justices and without a jury.—Connelly v. State, 60 Ala. 89; Ex parte Brown, 63 Ala. 187. And in these cases **the complaint need not conclude "against the peace, etc."**—Thomas v. State, 107 Ala. 61; Simpson v. State, 111 Ala. 6. Law giving **punitive damages in a civil action** does not violate.—R. & D. R. Co. v. Freeman, 97 Ala. 289.

§10. That no person shall, for the same offense, be twice put in jeopardy of life or limb.

When jeopardy begins.—Grogan v. State, 44 Ala. 1. **A single crime cannot be subdivided** into two or more offenses.—Ben v. State, 22 Ala. 9; Moore v. State, 71 Ala. 307; Hurst v. State, 86 Ala. 604. **A person has not been in jeopardy:** When judgment was arrested on account of a defective indictment, or indictment quashed.—State v. Phil, 1 Stew. 31; Weston v. State, 63 Ala. 155. Nor when informal verdict set aside, or case is reversed, and new trial granted.—State v. Slack, 6 Ala. 676; State v. Hughes, 2 Ala. 102; Cobia v. State, 16 Ala. 781; Turner v. State, 40 Ala. 21; Waller v. State, 40 Ala. 325; Jeffries v. State, 40 Ala. 381; Kendall v. State, 65 Ala. 492; Morisette v. State, 77 Ala. 71. Nor when a part of the sentence under a former conviction has been served.—Jeffries v. State, 40 Ala. 381. Nor when a judge withdraws from the bench.—State v. Abram, 4 Ala. 272. Or becomes sick and unable to proceed with the trial.—Nugent v. State, 4 S & P. 72. Nor where nol. pros. is entered on account of a variance.—State v. Kreps, 8 Ala. 951. Nor where former prosecution was based on a void warrant.—Johnson v. State, 82 Ala. 29. Nor where a juror becomes sick and unable to proceed, or in any case of pressing necessity.—Hawes v. State, 88 Ala. 37; Powell v. State, 19 Ala. 577. **A person has been in jeopardy:** When tried for an offense which includes the one he is being prosecuted for.—Sanders v. State, 55 Ala. 42. When there has been an unauthorized discharge of the jury.—Ned v. State, 7 Port. 187; Law v. State, 4 Ala. 173; Powell v. State, 19 Ala. 577; McCauley v. State, 26 Ala. 135; Ex parte Vincent, 43 Ala 402; (in conflict, State, ex rel. Battle, 7 Ala 259; Barrett v. State, 35 Ala. 406, as to when discharge is authorized); Grogan v. State, 44 Ala. 9; Bell v. State, 48 Ala. 684; Cook v. State, 60 Ala. 39; Foster v. State, 88 Ala. 182; Jackson v. State, 102 Ala. 76; Hayes v. State, 107 Ala. 1. For the protection of the accused, and may be waived.—Ned v. State, 7 Port. 187; McCauley v. State, 26 Ala. 135; Barrett v. State, 35 Ala. 406; Hughes v. State, Ib. 135; Turner v. State, 40 Ala. 21; Jeffries v. State, Ib. 381; Kendall v. State, 65 Ala. 492; Morisette v. State, 77 Ala. 71. Being convicted or acquitted of aiding one prisoner to escape, a person cannot be again indicted for aiding another for the same act.—Hurst v. State, 86 Ala. 604.

§11. That no person shall be debarred from prosecuting or defending, before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Applies to "Mayor's Court."—Withers v. State, 36 Ala. 252. Need not employ an attorney, but **party may appear in person.**—May v. Williams, 17 Ala. 23. **No court can exclude an attorney until after he is suspended.**—Withers v. State, 36 Ala. 252. **Taxing an attorney's fee as costs against railroad operates to debar.**—S. & N. R. Co. v. Morris, 65 Ala. 193. **And so, the requirement that any one prosecuting or defending** against purchaser at tax sale **shall deposit money before being allowed to do so.**—Stoudenmire v. Brown, 48 Ala. 699; Whitworth v. Anderson, 54 Ala. 33; Lassiter v. Lee, 68 Ala. 287. But the imposition of the "library tax" does not.—Swann v. Kidd, 79 Ala. 431.

§12. That the right of trial by jury shall remain inviolate.

Jury must consist of twelve men.—Collins v. State, 88 Ala. 212; M & C. R. Co. v. B. S. & T. R. Co., 96 Ala. 571. **Does not extend the right to cases unknown to the common law, or to the statute law at the time of the adoption of the Constitution.**—Boring v. Williams, 17 Ala. 510; Tims v. State, 26 Ala. 165; Thomas v. Bibb, 44 Ala. 721; Taliaferro v. Lee, 97 Ala. 92. **Does not apply to impeachments.**—State v. Buckley, 54 Ala. 599. **Nor to proceeding to compel the delivery of property to successor in office.**—Chambers v. Stringer, 62 Ala. 596. **Nor to bill of discovery by creditor.**—M. & F. Ry. Co. v. McKenzie, 85 Ala. 546 (s. c., 96 Ala. 465); S. Ry. & C. Co. v. McKenzie, 96 Ala. 465; Norman v. Goetter, 96 Ala. 468; N. Y. Condensed Milk Co. v. Cook, 100 Ala. 580; Cook v. Schmidt, 100 Ala. 582. **Nor to proceedings, under the statute, to try the right to a public office.**—Taliaferro v. Lee, 97 Ala. 92 (declaring State v. Burnett, 2 Ala. 140, dictum). But see Wammack v. Holloway, 2 Ala. 31. But legislature **may, as matter of grace, give a jury trial.**—Taliaferro v. Lee, 97 Ala. 92. **Law authorizing a toll-gate to be thrown open** if the road is out of repair **is a denial of trial by jury.**—Powell v. Sammons, 31 Ala. 552. **Includes the right to have the deliberations of the jury continued until a legal reason for discharge occurs.**—McCauley v. State, 26 Ala. 135. **Waiver of jury.**—Saunders v. State, 55 Ala. 42; Connelly v. State, 60 Ala. 89.

§13. That in prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and that in all indictments for libel, the jury shall have the right to determine the law and the facts, under the direction of the court.

§14. That all courts shall be open, and that every person, for any injury done him in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay.

Justice cannot be sold or denied by the exaction of a pecuniary consideration for its enjoyment from one, when it is freely given to another.—S. & N. R. Co. v. Morris, 65 Ala. 193; Smith v. L. & N. R. Co., 75 Ala. 449; L. & N. R. Co. v. Baldwin, 85 Ala. 619; Brown v. A. G. S. R. Co., 87 Ala. 370; Randolph v. B. & P. Sup. Co., 106 Ala. 501. **"Stay law" does not violate.**—Ex parte Pollard, 40 Ala. 77. **Nor "library tax."**—Swann v. Kidd, 79 Ala. 431. **Nor law providing that contracts shall only be awarded when a board of revenue and their clerk are in private.**—State v. Rogers, 107 Ala. 444. **But law requiring deposit of money by party prosecuting or defending suit against purchaser of land at tax sale violates this section.**—Stoudenmire v. Brown, 48 Ala. 699; Whitworth v. Anderson, 54 Ala. 33; Lassiter v. Lee, 68 Ala. 287. **Taxing an attorney's fee against railroads in certain cases is not "due process."**—S. & N. R. Co. v. Morris, 65 Ala. 193. **And giving justice of the peace extraordinary jurisdiction in actions for damages against railroad is discrimination** and unconstitutional.—Brown v. A. G. S. R. Co., 87 Ala. 370. And a law **giving the lienor filing a mechanic's lien a lien also for an attorney's fee.**—Randolph v. B. & P. Sup. Co., 106 Ala. 501.

§15. That the State of Alabama shall never be made defendant in any court of law or equity.

State cannot be sued by cross-bill asking affirmative relief.—Holmes v. State, 100 Ala. 90. **Suit against the warden of the penitentiary** on a contract made by him in his official capacity, **is a suit against the State.**—Comer v. Bankhead, 70 Ala. 493.

§16. That excessive fines shall not be imposed, nor cruel or unusual punishments be inflicted.

§17. That all persons shall, before conviction, be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great; and that excessive bail shall not, in any case, be required.

Designed to place the right to bail beyond legislative or judicial power; does not restrain legislature from authorizing bail in the excepted cases.—Ex parte Croom, 19 Ala. 561. **To justify refusal of bail the offense must be capital, the proof evident or presumption great;** this cannot be if a well-founded doubt exists.—Ex parte Simonton, 9 Port. 390; Ex parte McCrary, 22 Ala. 65; Ex parte Banks, 28 Ala. 89; Ex parte Mahone, 30 Ala. 49; Ex parte Howard, 30 Ala. 43; Ex parte Bryant, 34 Ala. 270. **It is a safe rule to deny bail if the court would sustain a capital conviction** on the evidence. —Ex parte Nettles, 58 Ala. 268. **Bail should be granted where the evidence is circumstantial, "unless it excludes to a moral certainty every other hypothesis but that of guilt."**—Ex parte Acree, 63 Ala. 234. **Law providing that if the defendant is not tried at the second term he may have bail does not violate.**—Ex parte Croom, 19 Ala. 561. **If the assaulted person is likely to die within a year and a day, accused is not entitled to bail,** unless he would be so entitled if assaulted person died.—Ex parte Andrews, 19 Ala. 582.

§18. That the privilege of the writ of habeas corpus shall not be suspended by the authorities of this State.

§19. That treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and that no person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or his own confession in open court.

§20. That no person shall be attainted of treason by the general assembly; and that no conviction shall work corruption of blood, or forfeiture of estate.

§21. That no person shall be imprisoned for debt.

Applies to liabilities ex contractu; defendant may not be imprisoned for alleged contempt in failing to pay a decree for money.—Ex parte John Hardy, 68 Ala. 303; State v. Allen, 71 Ala. 543; Smith v. State, 82 Ala. 40; Wynn v. State, 82 Ala. 55; Carr v. State, 106 Ala. 35; Crosby v. City Council, 108 Ala. 498. **Fines, forfeitures, and costs arise ex delicto, and are not debts.**—Nelson v. State, 46 Ala. 186; Morgan v. State, 47 Ala. 34; Caldwell v. State, 55 Ala. 133; Ex parte Hardy, 68 Ala. 303; State v. Bauerman, 72 Ala. 252; Lee v. State, 75 Ala. 29; State v. Leach, 75 Ala. 36; Smith v. State, 82 Ala. 40; Wynn v. State. 82 Ala. 55; Ex parte Russellville, 95 Ala. 19. **Advances made to a convict by his surety in the confessed judgment is a debt** arising ex contractu.—Smith v. State, 82 Ala. 40; Wynn v. State, 82 Ala. 55. **Law punishing crime of enticing servant of another** does not imprison for debt.—Tarpley v. State, 79 Ala. 271. **Nor "innkeepers' law."**—Ex parte King, 102 Ala. 182. **Nor imprisonment as a punishment visited on employees of a water company for violation of their contract with a city.**—Crosby v. City Council, 108 Ala. 498. **Law authorizing imprisonment, not as an alternative punishment or in lieu of fine and costs, but as a means of coercing the payment of fine and costs, violates.**—Ex parte Russellville, 95 Ala. 19. **And so, a law punishing with imprisonment, a banker who receives a deposit knowing he is insolvent.**—Carr v. State, 106 Ala. 35. **It makes no difference that the debt was contracted fraudulently.**—Ex parte Hardy, 68 Ala. 303; Carr v. State, 106 Ala. 35.

§22. That no power of suspending laws shall be exercised, except by the general assembly.

§23. That no ex post facto law, or any law impairing the obligation of contracts, or making any irrevocable grants of special privileges or immunities, shall be passed by the general assembly.

No ex post facto law shall be passed.—Aldridge v. T. C. & D. R. Co. 2 S. & P. 199; Elliott v. Mayfield, 4 Ala. 417; Holman v. Bank of Norfolk, 12 Ala. 369; Eliza v. State, 39 Ala. 693; Aaron v. State, 39 Ala. 684; Witherby v. State, 39 Ala. 702; Ferdinand v. State, 39 Ala. 706; Turner v. State, 40 Ala. 21; Hart v. State, Ib., 32; Miles v. State, Ib., 39; Moore v. State, Ib., 49; Miller v. State, Ib., 54; Stephen v. State, Ib., 67; Walthall v. Walthall, 42 Ala. 450; Caldwell v. State, 55 Ala. 133; Payne v. State, 60 Ala. 80; Goodlett v. Kelly, 74 Ala. 213; Washington v. State, 75 Ala. 582; South v. State, 86 Ala. 617; Perry v. State, 87 Ala. 30; Brown v. Williams, 87 Ala. 353; Cary v. Simmons, 87 Ala. 524. **Nor any law impairing the obligation of contracts.**—Wheat v. State, Minor, 199; State v. Tombeckbee Bank, 2 Stew., 30; Anonymous, 2 Stew., 228; Dale v. Governor, 3 Stew., 387; Aldridge v. Tuscumbia R. Co. 2 S. & P., 199; Bloodgood v. Cammack, 5 S. & P., 276; Trustees v. Winston, 5 S. & P., 17; Dyer v. Tuscaloosa Bridge Co., 2 Port., 297; Rathbone v. Bradford, 1 Ala. 312; Givens v. Western Bank, 2 Ala. 397; Bartlett v. Lang, 2 Ala. 402; Iverson v. Shorter, 9 Ala. 713; Paschal v. Whitsitt, 11 Ala. 472; Holman v. Bank of Norfolk, 12 Ala. 369; Trustee v. Walden, 15 Ala. 655; Benford v. Gibson, Ib., 521; Walker v. Chapman, 22 Ala. 116; Beck v. Burnett, Ib., 822; Jemison v. P. & M. Bank, 23 Ala. 168; Mays v. Williams, 27 Ala. 267; M. & O. R. Co. v. State, 29 Ala. 573; Coosa River S. Co. v. Barclay, 30 Ala. 120; Powell v. Sammons, 31 Ala. 552; Bugbee v. Howard, 32 Ala. 713; Curry v. Landers, 35 Ala. 280; T. & C. R. Co. v. Moore, 36 Ala. 371; Ex parte N. E. &. S. W. A. R. Co., 37 Ala. 679; Ala. Life Ins. Co. v. Boykin, 38 Ala 510; Warfield v. Ravesies, Ib., 518; A. & F. R. Co. v. Kenney, 39 Ala. 307; Blann v. State, 39 Ala. 353; Ex parte Pollard, 40 Ala. 77; Page v. Matthews, 40 Ala. 547; Hudspith v. Davis, 41 Ala. 389; Scheible v. Bacho, 41 Ala., 423; Tarleton v. Southern Bank, 41 Ala. 722; Kirtland v. Molton, 41 Ala. 548; Weaver v. Lapsley, 43 Ala. 224; Ashurst v. Phillips, 43 Ala. 158; Hubert v. Easton, 43 Ala. 547; Hale v. Huston, 44 Ala. 134; Ex parte Norton, 44 Ala. 177; Roach v. Gunter, 44 Ala. 209; Ex parte Sims, 44 Ala. 248; Curry v. Reynolds, 44 Ala. 349; School Coms. v. Putnam, 44 Ala. 506; Martin v. Hearst, 44 Ala. 418; Fitzpatrick v. Hearne, 44 Ala. 171; Perkins v. Corbin, 45 Ala. 103; Broadbent v. Tuscaloosa S. & A. Assn., 45 Ala. 170; A. & F. R. Co. v. Burkett, 46 Ala. 569; Med. College v. Muldon, 46 Ala. 603; Wharton v. Cunningham, 46 Ala. 590; Boyd v. State, 46 Ala. 329; M. & G. R. Co. v. Peebles, 47 Ala. 317; Micou v. Tallassee Bridge Co., 47 Ala. 652; Commissioners v. Rather, 48 Ala. 433; Horst v. Moses, 48 Ala. 129; Todd v. Neal, 49 Ala. 266; Ex parte Buckley, 53 Ala. 42; Wilson v. Brown, 58 Ala. 62; Nelson v. McCrary, 60 Ala. 301; M. & M. R. Co. v. Steiner, 61 Ala. 559; State v. Cobb, 64 Ala. 127; Steele v. Steele, 64 Ala. 438; Fearn v. Ward, 65 Ala. 33; Smith v. Cockrell, 66 Ala. 64; Powell v. State, 69 Ala. 10; Edwards v. Williams, 70 Ala. 145; Peevy v. Cabaniss, 70 Ala. 253; Slaughter v. Mobile Co., 73 Ala. 134; Goodlett v. Kelly, 74 Ala. 213; M. & S. H. R. Co. v. Kennedy, 74 Ala., 566; Dunlap v. State, 76 Ala., 460; Bell v. Hall, 76 Ala., 546; Amy v. Selma, 77 Ala. 103; B. & P. M. St. Ry. Co. v. B. St. Ry. Co., 79 Ala. 465; County Commissioners v. Woodstock, I Co., 82 Ala. 151; Winter v. City Council, 83 Ala. 589; N. C. & St. L. R. Co. v. State, 83 Ala. 71; McDonnell v. Ala. Gold Life Ins. Co., 85 Ala. 401; Abbett v. Page, 92 Ala. 571; Harold v. Herrington, 95 Ala., 395; Osborn v. Johnson, W. P. Co., 99 Ala. 309; State v. Montgomery L. Co., 102 Ala. 594; Lindsay v. Mayor, 104 Ala. 257; Crosby v. City Council, 108 Ala., 498. **Nor any law making irrevocable grants of special privileges or immunities.**—Daughdrill v. Ala. Life Ins. Co., 31 Ala., 91; Sadler

v. Langham, 34 Ala., 311; Clark v. Mobile School Commissioners, 36 Ala., 621; B. & P. M. St. Ry. Co. v. B. St. Ry. Co., 79 Ala. 465; Carter v. Coleman, 84 Ala., 256; Youngblood v. Birmingham Trust & Savings Co., 95 Ala. 521; Ex parte King, 102 Ala. 182.

§24. That the exercise of the right of eminent domain shall never be abridged, nor so construed as to prevent the general assembly from taking the property and franchises of incorporated companies, and subjecting them to public use the same as individuals; but private property shall not be taken or applied for public use, unless just compensation be first made therefor; nor shall private property be taken for private use, or for the use of corporations other than municipal, without the consent of the owner. *Provided, however*, that the general assembly may, by law, secure to persons or corporations the right of way over the lands of other persons or corporations, and by general laws provide for and regulate the exercise by persons and corporations of the rights herein reserved; but just compensation shall, in all cases, be first made to the owner. *And provided*, that the right of eminent domain shall not be so construed as to allow taxation, or forced subscription, for the benefit of railroads, or any other kind of corporations other than municipal, or for the benefit of any individual or association.

Whatever is beneficially employed for the community is a public use.—Aldridge v. Tuscumbia R. Co., 2 S. & P. 199. **The taking of water to supply a city is a public use.**—Stein v. Burden, 24 Ala. 130; Stein v. Ashley, 24 Ala. 521; Burden v. Stein, 27 Ala. 104. **Also to run a public grist-mill.**—Sadler v. Langham, 34 Ala. 311; Bottoms v. Brewer, 54 Ala. 288. **Also land for plank road or canal.**—Sadler v. Langham, 34 Ala. 311. **Right extends to all property**, whether under mortgage or owned by chartered corporation.—A. & F. R. Co. v. Kenny, 39 Ala. 307; E. & W. R. Co. v. E. T. V. & G. R. Co., 75 Ala. 275; M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala. 571. **But property and franchises of a corporation,** taken by it for public use, **may be only again taken for public use** by the legislature.—A. & C. R. Co. v. J. G. & A. R. Co., 82 Ala. 297. **Right may be given to railroad company.**—Aldridge v. Tuscumbia R. Co., 2 S. & P. 199; Davis v. Tuscumbia R. Co., 4 S. & P., 421; Jones v. N. O. R. Co., 70 Ala. 227; M. S. R. Co. v. Sayre, 72 Ala. 443. **Compensation must be made before or at the time of taking,** unless prepayment is waived.—N. O. R. Co. v. Jones, 68 Ala. 48; s. c., 70 Ala. 227; M. S. R. Co. v. Sayre, 72 Ala. 443; City Council v. Townsend, 80 Ala. 489; s. c., 84 Ala. 478; Faust v. Mayor, 83 Ala. 279; Woodward I. Co. v. Cabaniss, 87 Ala. 328; Postal Tel. C. Co. v. A. G. S. R. Co., 92 Ala. 331; A. M. Ry. Co. v. Newton, 94 Ala. 443; Highland Ave. & B. R. Co. v. Matthews, 99 Ala. 24. **And this applies to the State itself.**—Smith v. Inge, 80 Ala. 283; M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala. 571. **The crossing of one railroad by another is a "taking."**—M. & G. Ry. Co. v. A. M. Ry. Co., 87 Ala. 501; M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala. 571; See citations to Art. XIV., Sec. 7. **Considerations governing compensations.**—A. & F. R. Co. v. Burkett, 46 Ala. 569. Owner of a ferry cannot claim compensation for loss of business from the building of a bridge.—Dyer v. Tuscaloosa Bridge Co., 2 Port. 296. **Private property may now be taken for private use, compensation being first made.**—State v. County Commissioners, 83 Ala. 304. **Appeal; trial by jury.**—M. S. Ry. Co. v. Sayre, 72 Ala. 443.

§25. That all navigable waters shall remain forever public highways, free to the citizens of the State and of the United States, without tax, impost, or toll; and that no tax, toll, impost, or wharfage shall be demanded or received from the owner of any merchandise or commodity, for the use of the shores, or any wharf erected on the shores, or in or over the waters of any navigable stream, unless the same be expressly authorized by law.

The bed of a navigable stream and the fish and oysters therein are the property of the State.—State v. Harrub, 95 Ala. 176.

§26. That the citizens have a right in a peaceable manner to assemble together for the common good, and to apply to those invested with the power of government, for redress of grievances, or other purposes, by petition, address, or remonstrance.

§27. That every citizen has a right to bear arms in defense of himself and the State.

Law prohibiting the carrying of weapons concealed is a mere regulation and not violative.—State v. Reid, 1 Ala. 612. **Law making it an offense to point firearms at another does not violate;** has no application to cases of self-defense.—Davenport v. State, 112 Ala. 49.

§28. That no standing army shall be kept up without the consent of the general assembly; and, in that case, no appropriation for its support shall be made for a longer term than one year; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

§29. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

§30. That no title of nobility, or hereditary distinction, privilege, honor, or emolument, shall ever be granted or conferred in this State; and that no office shall be created, the appointment to which shall be for a longer time than during good behavior.

To preserve the equality of citizens in public and private rights.—Horst v. Moses, 48 Ala. 129.

§31. That immigration shall be encouraged; emigration shall not be prohibited, and that no citizen shall be exiled.

License cannot be required of a person contracting to carry away laborers.—Joseph v. Randolph, 71 Ala. 499.

§32. That temporary absence from the State shall not cause a forfeiture of residence once obtained.

§33. That no form of slavery shall exist in this State; and there shall be no involuntary servitude, otherwise than for the punishment of crime, of which the party shall have been duly convicted.

Convict, violating labor contract for fine and costs, may be punished criminally.—Smith v. State, 82 Ala. 40; Wynn v. State, 82 Ala. 55.

§34. The right of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult, or other improper conduct.

§35. The people of this State accept as final the established fact, that from the Federal Union there can be no secession of any State.

§36. Foreigners who are, or may hereafter become, bona fide residents of this State shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property, as native-born citizens.

§37. That the sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty and property; and when the government assumes other functions, it is usurpation and oppression.

Law taxing an attorney's fee as costs against railroad in certain cases violates.—S. & N. R. Co. v. Morris, 65 Ala. 193. Buying and selling of cotton in the seed in certain localities may be prohibited.—Mangan v. State, 76 Ala. 60.

§38. No educational or property qualification for suffrage or office, nor any restraint upon the same on account of race, color, or previous condition of servitude, shall be made by law.

§39. That this enumeration of certain rights shall not impair or deny others retained by the people.

Enumeration cannot be construed to disparage or deny other rights retained by the people.—Ex parte Dorsey, 7 Port. 293.

ARTICLE II.

STATE AND COUNTY BOUNDARIES.

§1. The boundaries of this State are established and declared to be as follows, that is to say: Beginning at the point where the thirty-first degree of north latitude crosses the Perdido river; thence east, to the western boundary line of the State of Georgia; thence along said line to the southern boundary line of the State of Tennessee; thence west, along the southern boundary line of the State of Tennessee, crossing the Tennessee river, and on to the second intersection of said river by said line; thence up said river to the mouth of Big Bear creek; thence by a direct line to the northwest corner of Washington county, in this State, as originally formed; thence southerly, along the line of the State of Mississippi, to the Gulf of Mexico; thence eastwardly, including all islands within six leagues of the shore, to the Perdido river; thence up the said river to the beginning.

§2. The boundaries of the several counties of this State, as heretofore established by law, are hereby ratified and confirmed. The general assembly may, by a vote of two-thirds of both houses thereof, arrange and designate boundaries for the several counties of this State, which boundaries shall not be altered, except by a like vote; but no new counties shall be hereafter formed of less extent than six hundred square miles; and no existing county shall be reduced to less extent than six hundred square miles, and no new county shall be formed which does not contain a sufficient number of inhabitants to entitle it to one representative, under the ratio of representation existing at the time of its formation, and leave the county or counties from which it is taken with the required number of inhabitants entitling such county or counties to separate representation.

ARTICLE III.

DISTRIBUTION OF POWERS OF GOVERNMENT.

§1. The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

Distribution of powers.—Ex parte Screws, 49 Ala. 57; Scott v. Strobach, 49 Ala. 477; Fox v. McDonald, 101 Ala. 51. **Legislative power.**—Legislature exclusive judge of what is a public use.—Sadler v. Langham, 34 Ala. 311. Controls domestic affairs of the State.—Ex parte Norton, 44 Ala. 177. Determines who are its members.—Ex parte Screws, 49 Ala. 57; Scott v. Strobach, 49 Ala. 477. May remove administration of estate to another county without invading the judiciary.—Wright v. Ware, 50 Ala. 549. And transfer a cause to another court of co-ordinate jurisdiction.—Ex parte Hickey, 52 Ala. 228. And compromise and settle past due taxes.—Tallassee Mfg. Co. v. Glenn, 50 Ala. 489. And require a license or certificate of fitness of locomotive engineers.—McDonald v. State, 81 Ala. 279; N. C. & St. L. Ry. Co. v. State, 83 Ala. 71 (affirmed 128 U. S. 96); Smith v. State, 85 Ala. 341 (affirmed 124 U. S., 465); Baldwin v. State, 85 Ala. 619. And empower administrator to sell lands to pay debts.—Holman v. Bank of Norfolk, 12 Ala. 369. And regulate civil procedure, allowing real party in interest to intervene.—Perry v. Cabaniss, 70 Ala. 253. And declare that only certain of the State's liabilities shall be adjusted on a given basis.—State v. Cobb, 64 Ala. 127. **Extent of power to pass special laws for the sale of the property of minors, deceased persons, etc.**—Chappell v. Williamson, 49 Ala. 153; Todd v. Flournoy, 56 Ala. 99; Watson v. Oates, 58 Ala. 647; Tindal v. Drake, 60 Ala. 170; Bruce v. Bradshaw, 69 Ala. 360; Mumford v. Pearce, 70 Ala. 452. **Cannot declare, in opposition to established procedure, that no appeal shall be discontinued except on motion.**—Carleton v. Goodwin, 41 Ala. 153. **Nor that conveyance already executed is invalid because not according to forms then prescribed.**—Ala. L. I. & T. Co. v. Boykin, 38 Ala. 510. **Nor declare certain**

judgments void.—Sanders v. Cabaniss, 43 Ala. 173; Weaver v. Lapsley, 43 Ala. 224; But see Ex parte Bibb, 44 Ala. 140; Ex parte Norton, 44 Ala. 177. **Nor authorize commissioners to treat a sale as rescinded** under certain conditions.—Hardy v. Bank, 15 Ala. 722. **Nor remit fines.**—Haley v. Clark, 26 Ala. 439. **But may remit penalty** for failure to pay taxes.—M. & G. R. Co. v. Peebles, 47 Ala. 317. **And cure defects in the organization of private corporations.**—C. A. & M. Assn. v. Ala. Gold Life Ins. Co., 70 Ala. 120. **And exercise certain powers of forfeiture.**—M. & O. R. Co. v. State, 29 Ala. 573. **And bind the State by contract.**—T. & C. R. Co. v. Moore, 36 Ala. 371; State v. Cobb, 64 Ala. 127. **And establish rules of evidence within constitutional limitations.** —Stoudenmire v. Brown, 48 Ala. 699. **As to delegation of power,** see Art. IV., Sec. 1, and Art. XI. **Executive power.**—Power of appointment is given, not inherent.—Fox v. McDonald, 101 Ala. 51. Governor has no general authority to contract in the name of the State.—State v. Cobb, 64 Ala. 127. Must conform to legislative will.—Ex parte Screws, 49 Ala. 57. Law prohibiting distillation of grain except under the direction of the governor is no invasion of legislative functions.—Ingram v. State, 39 Ala. 247. Governor alone has power to remit fines.—Haley v. Clark, 26 Ala. 439. Mandamus lies to compel governor to exercise ministerial functions.—T. & C. R. Co. v. Moore, 36 Ala. 371. See State v. Cobb, 64 Ala. 127. **Judicial power.**—Judiciary declare what the law is, legislature what it shall be.—Ala. L. & I. Co. v. Boykin, 38 Ala. 510. The forfeiture of a charter is the province of the courts.—M. & O. R. Co. v. State, 29 Ala. 573. Trial of the constitutional qualifications of a judge elected by the legislature is judicial, not political.—State v. Porter, 1 Ala. 688 (overruling State v. Paul, 5 S. & P. 40). Cannot control the speaker in the exercise of his functions.—Ex parte Echols, 39 Ala. 698. Will not condemn legislative construction of a contract unless clearly wrong.—Ex parte S. & G. R. Co., 45 Ala. 696. Can only interfere to control legislative mistakes when they involve a disregard of some constitutional limitations; nor interfere with the executive except as to purely ministerial duties. Ex parte Screws, 49 Ala. 57; Scott v. Strobach, 49 Ala. 477.

§2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

See citations to preceding section.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

§1. The legislative power of this State shall be vested in a general assembly, which shall consist of a senate and house of representatives.

The Constitution is a limitation, not a grant of power; legislative power is unlimited except as restrained by State or Federal Constitution.—Ex parte Dorsey, 7 Port. 293; State v. Reid, 1 Ala. 612; Ex parte Pickett, 24 Ala. 91; Stein v. Mayor, 24 Ala. 591; Noles v. State, 26 Ala. 31; Dorman v. State, 34 Ala. 216; Ingram v. State, 39 Ala. 249; A. & F. R. Co. v. Burkett, 42 Ala. 83; Gunter v. Dale Co., 44 Ala. 639; Ex parte S. & G. R. Co., 45 Ala. 696; Wright v. Ware, 50 Ala. 549; Board of Revenue v. Barber, 53 Ala. 589; Irwin v. Mayor, 57 Ala. 6; Harrison v. Grady, 57 Ala. 49; Williams v. State, 61 Ala. 33; Davis v. State, 68 Ala. 58; Central A. & M. Assn. v. Ala. Gold Life Ins. Co., 70 Ala. 120; Van Hook v. Selma, 70 Ala. 361; Mangan v. State, 76 Ala. 60; Moog v. Randolph, 77 Ala. 597; Ex parte Lusk, 82 Ala. 519; Schultes v. Eberly, 82 Ala. 242; Hare v. Kennerly, 83 Ala. 608; Mayor v. Klein, 89 Ala. 461; Johnson v. State, 91 Ala. 70; State v. Melvin, 95 Ala. 176; Jones v. Jones, 95 Ala. 443; Adams v. Creen, 100 Ala. 218; Smith v. Boutwell, 101 Ala. 373; Fox v. McDonald, 101 Ala. 51; Ex parte Sikes, 102 Ala. 173. **The presumption is that power has not been exceeded.**—State v. Rogers, 107 Ala. 444. **Police power.**—Restrictions may be imposed on the sale of intoxicants in respect to quantity and purchasers.—Lodano v. State, 25 Ala. 64. And it may be regulated or prohibited in particular districts.—Harrison v. Gordy, 57 Ala. 49; Harrison v. State, 91 Ala. 62; Ex parte Sikes, 102 Ala. 173. But the importation from another State, and sale in original packages, cannot be interfered with.—Keith v. State, 91 Ala. 2; Rion v. State, 91 Ala. 2; Harrison v. State, 91 Ala. 62. Distillation of spirits except under direction of the Governor, may be prohibited.—Ingram v. State, 39 Ala. 247. Legislature may prohibit dealing in cotton in the seed in particular localities.—Mangan v. State, 76 Ala. 60. May require license of locomotive engineers.—McDonald v. State, 81 Ala. 279; N. C. & St. L. R. Co. v. State, 83 Ala. 71; (affirmed, 128 U. S. 96); Smith v. State, 85 Ala. 341; (affirmed, 124 U. S., 465); Baldwin v. State, 85 Ala. 619. And of a physician.—Brooks v. State, 88 Ala. 122. And of a lawyer.—Cousins v. State, 50 Ala. 113. And of a dealer in fertilizers; requiring sacks to be tagged also.—Steiner v. Ray, 84 Ala. 93; Brown v. Adair, 104 Ala. 652. May require a railroad to erect cattle-guards.—B. M. R. Co. v. Parsons, 100 Ala. 662. May require railroad employees to be examined for color-blindness.—L. & N. R. Co. v. Baldwin, 85 Ala. 619; N. C. & St. L. R. Co. v. State, 83 Ala. 71 (affirmed, 128 U. S. 96).

Power to pass special laws applicable to one or more designated counties or localities.—Holman v. Bank of Norfolk, 12 Ala. 369; Coltart v. Allen, 40 Ala. 155; Chappell v. Williamson, 49 Ala. 153; Wright v. Ware, 50 Ala. 549; Ex parte Hickey, 52 Ala. 228; VanHoose v. Bush, 54 Ala. 342; Todd v. Flournoy, 56 Ala. 99; Watson v. Oates, 58 Ala. 647; Tindall v. Drake, 60 Ala. 170; Bruce v. Bradshaw, 69 Ala. 360; Mumford v. Pearce, 70 Ala. 452; Stanfill v. Dallas Co., 80 Ala. 287; Dunn v. Wilcox Co., 85 Ala. 144; McGraw v. Co. Comrs., 89 Ala. 407; Spigener v. Reeves, 104 Ala. 437. **To pass "stock laws."**—Stanfill v. Dallas Co., 80 Ala. 287; Spigener v. Reeves, 104 Ala. 437. **To pass special laws authorizing sales of property** of infants, transfer of administration, etc.—Holman v. Bank of Norfolk, 12 Ala. 369; Coltart v. Allen, 40 Ala. 155; Campbell v. Williamson, 49 Ala. 153; Wright v. Ware, 50 Ala. 549; Ex parte Hickey, 52 Ala. 228; Van Hoose v. Bush, 54 Ala. 342; Todd v. Flournoy, 56 Ala. 99; Watson v. Oates, 58 Ala. 647; Tindall v. Drake, 60 Ala. 170; Bruce v. Bradshaw, 69 Ala., 360; Mumford v. Pearce, 70 Ala. 452. (As to power since adoption of this Constitution see Art. IV., Sec. 23.) To provide for **the removal of court-house.**—Ex parte Hill, 40 Ala. 121. To **dispense with formalities** required by incorporation laws.—Central A. & M. Assn. v. Ala. Gold Life Ins. Co., 70 Ala. 120. To authorize **grant of new trials.**—Ex parte Norton, 44 Ala. 177. To provide for **the punishment of offense partly perpetrated without the State.**—Green v. State, 66 Ala. 40. **To change the garnishment law at pleasure.**—Adams v. Creen, 100 Ala. 218. **To exclude, or impose restrictions, on foreign corporations.**—Noble v. Mitchell, 100 Ala. 519 (affirmed, 164 U. S., 367). See Art. XIV., Sec. 4. **To control fine and forfeiture fund.**—Herr v. Seymour, 76 Ala. 270; Sessions v. Boykin, 78 Ala. 328; Brown v. Parris, 93 Ala. 314; Harold v. Herrington, 95 Ala. 395. To elect a county solicitor to perform duties of, and to the exclusion of the circuit solicitor.—Ex parte Lusk, 82 Ala. 519. To bind the State by contract.—T. & C. R. Co. v. Moore, 36 Ala. 371; State v. Cobb, 64 Ala. 127. **To regulate occupations and businesses of all kinds;** but all members of a particular class must be equally amenable to the regulations.—Mayor v. Yuille, 3 Ala. 137; Ex parte Marshall, 64 Ala. 266; S. & N. R. Co. v. Morris, 65 Ala. 193; Smith v. L. & N. R. Co., 75 Ala. 449; Harrison v. Jones, 80 Ala. 412; McDonald v. State, 81 Ala. 279; Carter v. Coleman, 84 Ala. 256; L. & N. R. Co. v. Baldwin, 85 Ala. 619; Youngblood v. B. T. & S. Co., 95 Ala. 521. Legislative power **cannot be delegated except to counties and municipal corporations to a limited extent.**—Clark v. Mobile, 67 Ala. 217; Schultes v. Eberly, 82 Ala. 242; Dunn v. Wilcox Co., 85 Ala. 144. **Delegation of power to municipal corporations:** Power to delegate a reiteration of the common law.—Dunn v. Wilcox Co., 85 Ala. 144. May delegate power to levy taxes and impose licenses on every species of property and all occupations except when restrained by State or Federal Constitution.—Yuille v. Mayor, 3 Ala. 137; State v. Estabrook, 6 Ala. 653; Carroll v. Mayor, 12 Ala. 173; Osborne v. Mayor, 44 Ala. 493; City Council v. Shoemaker, 51 Ala. 114; Ex parte City Council, 64 Ala. 463; Van Hook v. Selma, 70 Ala., 361; Ex parte Byrd, 84 Ala. 17. To pass laws and ordinances having the force of laws of the legislature.—Marion v. Chandler, 6 Ala. 899; Mayor v. Rouse, 8 Ala. 515; Mayor v. Allaire, 14 Ala. 400; Moses v. Mayor, 52 Ala. 198. Under power to license and regulate retailing, prohibitory price cannot be charged for a license.—Ex parte Burnett, 30 Ala. 461; Craig v. Burnett, 32 Ala. 728; Miller v. Jones, 80 Ala. 89; Ex parte Cowert, 92 Ala. 94; Ex parte Mayor, 90 Ala. 516; Ex parte Sikes, 102 Ala. 173. But under power to license, regulate and restrain, prohibitory price may be charged for license to retail.—Marion v. Chandler, 6 Ala. 899. The power to license, if granted as a police power, cannot be used to raise revenue.—Ex parte Marshall, 64 Ala. 266; Van Hook v. Selma, 70 Ala. 361; Ex parte Byrd, 84 Ala. 17; Ex parte Sikes, 102 Ala. 173. **Holder of city license to retail is not exempted from payment of license fee to State, nor vice versa.**—State v. Estabrook, 6 Ala. 653; Mayor v. Rouse, 8 Ala. 515; Greensboro v. Mullins, 13 Ala. 341; West v. Greenville, 39 Ala. 69. **Municipality in prohibition district,** with power to suppress offenses against morality and decency, **may prohibit the sale of whiskey.**—Ex parte Russellville, 95 Ala. 19. **May delegate power** to license bakers and regulate the price of bread.—Mayor v. Yuille, 3 Ala. 137. To tax a steamboat owned by a citizen although registered under the laws of the United States.—Battle v. Mobile, 9 Ala. 234. To impose a tax on the sales of auctioneers, peddlers, etc., or license them.—Carroll v. Mayor, 12 Ala. 173. To levy a tax for local improvements.—Stein v. Mayor, 24 Ala. 591; Gibbons v. M. & G. N. R. Co., 36 Ala. 410. To license lawyers.—Goldthwaite v. City Council, 50 Ala. 486; Ex parte City Council, 64 Ala. 463. To levy a specific tax on an express company.—City council v. Shoemaker, 51 Ala. 114. To improve streets at the expense of adjacent property.—Irwin v. Mayor, 57 Ala. 6; Mayor v. Klein, 89 Ala. 461 (overruling Mayor v. Dargan, 45 Ala. 310; Mayor v. Royal St. R. Co., 45 Ala. 322). To impound cattle taken damage feasant, and sell them, if not redeemed.—Dillard v. Webb, 55 Ala. 468. To establish and regulate markets.—Ex parte Byrd, 84 Ala. 17. To prohibit transfer agent from going into railroad station to solicit patronage.—Lindsay v. Mayor, 104 Ala. 257. See also Art. XI. **Delegation to counties:** Counties are not municipal corporations, but civil or political divisions of the State, and quasi legislative powers may be given to them.—Askew v. Hale Co., 54 Ala. 639; Standfill v. Dallas Co., 80 Ala. 287; Schultes v. Eberly, 82 Ala. 242; Dunn v. Wilcox Co., 85 Ala. 144; McGraw v. County Comrs., 89 Ala. 407. **Cannot interfere with interstate commerce; what is interstate commerce.**—Mobile v. Leloup, 76 Ala. 401; W. U. Tel. Co. v. State Bd. Assmt., 80 Ala. 273; McDonald v. State, 81 Ala. 279; State v. Agee, 83 Ala. 110; Keith v. State, 91 Ala. 2; Rion v. State, 91 Ala.

2; Ware v. Hamilton B. S. Co., 92 Ala. 145; Nelms v. Edinburg Mfg. Co., 92 Ala. 157; Ex parte Murray, 93 Ala. 78; M. & O. R. Co. v. Dismukes, 94 Ala. 131; Cook v. Rome Brick Co., 98 Ala. 409; Culberson v. Am. T. & B. Co., 107 Ala. 457.

§2. The style of the laws of this State shall be: "Be it enacted by the General Assembly of Alabama." Each law shall contain but one subject, which shall be clearly expressed in its title, except general appropriation bills, general revenue bills, and bills adopting a Code, digest, or revision of statues; and no law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred, shall be re-enacted and published at length.

A Code of laws is valid if the bill by which it was adopted went through the prescribed forms.—Dew v. Cunningham, 28 Ala. 466; Hoover v. State, 59 Ala. 57; Bales v. State, 63 Ala. 30. **The valid adoption of a Code of laws re-enacts all the laws included therein,** although originally invalid because proper forms were not pursued. —Bales v. State, 63 Ala. 30. **Each law shall contain but one subject which shall be clearly expressed in the title, etc.**—Miles v. State, 40 Ala. 39; Ex parte Pollard, 40 Ala. 77; Tuscaloosa B. Co. v. Olmstead, 41 Ala. 9; Weaver v. Lapsley, 43 Ala. 224; Gunter v. Dale Co., 44 Ala. 639; Martin v. Hewitt, 44 Ala. 418; Ex parte S. & G. R. Co., 45 Ala. 696; Farley v. Dowe, 45 Ala. 324; Ex parte Upshaw, 45 Ala. 234; Falconer v. Robinson, 46 Ala. 340; DeKalb Co. v. Smith, 47 Ala. 407; Lockhart v. Troy, 48 Ala. 579; Horst v. Moses, 48 Ala. 129; Walker v. State, 49 Ala. 329; Lowndes Co. v. Hunter, 49 Ala. 507; Tallassee Mfg. Co. v. Glenn, 50 Ala. 489; State v. Price, 50 Ala. 568; Giles v. State, 52 Ala. 29; Moses v. Mayor, 52 Ala. 198; Ex parte Hickey, 52 Ala. 228; Key v. Jones, 52 Ala. 238; Ex parte Buckley, 53 Ala. 42; Board Rev. v. Barber, 53 Ala. 589; Boyd v. State, 53 Ala. 601; State v. Buckley, 54 Ala. 599; Dillard v. Webb, 55 Ala. 468; Smith v. State, 55 Ala. 1; Adler v. State, 55 Ala. 16; Watson v. State, 55 Ala. 158; Evans v. M. & C. R. Co., 56 Ala. 246; Dane v. McArthur, 57 Ala. 448; Rogers v. Torbut, 58 Ala. 523; Hoover v. State, 59 Ala. 57; Walker v. Griffith, 60 Ala. 361; Ex parte Moore, 62 Ala. 471; Bales v. State, 63 Ala. 30; Block v. State, 66 Ala. 493; Carson v. State, 69 Ala. 235; Montgomery Mut. B. & L. Assn. v. Robinson, 69 Ala. 413; Ballentyne v. Wickersham, 75 Ala. 533; Stein v. Leeper, 78 Ala. 517; Abernathy v. State, 78 Ala. 411; Donnelly v. State, 78 Ala. 453; Dunbar v. Frazer, 78 Ala. 538; Miller v. Jones, 80 Ala. 89; Morgan v. State, 81 Ala. 72; Tatum v. State, 82 Ala. 5; Hare v. Kennerly, 83 Ala. 608; Ramagnano v. Crook, 85 Ala. 226; Gandy v. State, 86 Ala. 20; Bolling v. LeGrand, 87 Ala. 482; Judson v. Bessemer, 87 Ala. 240; Ex parte Reynolds, 87 Ala. 138; Montgomery v. State, 88 Ala. 141; Glenn v. Lynn, 89 Ala. 608; M. & G. R. Co. v. Comrs., 97 Ala. 105; Ex parte Cowert, 92 Ala. 94; State v. Harrub, 95 Ala. 176; State v. Melvin, 95 Ala. 176; Barnhill v. Teague, 96 Ala. 207; Woolf v. Taylor, 98 Ala. 254; Bradley v. State, 99 Ala. 177; State v. Hartford Ins. Co., 99 Ala. 221; Dean v. State, 100 Ala. 102; Fox v. McDonald, 101 Ala. 51; Yerby v. Cochrane, 101 Ala. 541; Randolph v. B. & P. Sup. Co., 106 Ala. 501; Burton v. State, 107 Ala. 108; Montgomery v. State, 107 Ala. 372; State v. Rogers, 107 Ala. 444; City Council v. National B. & L. Assn., 108 Ala. 336; Rice v. Westcott, 108 Ala. 353; Ex parte Gayles, 108 Ala. 514; Harper v. State, 109 Ala. 28, 66; Davenport v. State, 112 Ala. 49. **Preamble of statutes.**—White v. Levy, 91 Ala. 175. **No law shall be revived, amended, extended, etc.**—Rogers v. Torbut, 58 Ala. 523; Clarke v. Mobile, 67 Ala. 217; Stewart v. County Comrs., 82 Ala. 209; State v. Warford, 84 Ala. 15; Todd v. State, 85 Ala. 339; Gandy v. State, 86 Ala. 20; Bolling v. LeGrand, 87 Ala. 482; Bay Shell Road Co. v. O'Donnell, 87 Ala. 376; Judson v. Bessemer, 87 Ala. 240; Ex parte Pierce, 87 Ala. 110; Maxwell v. State, 89 Ala. 150; Ex parte Cowert, 92 Ala. 94; Barnhill v. Teague, 96 Ala. 207; Childs v. State, 97 Ala. 49; Stewart v. State, 100 Ala. 1; Miller v. Berry, 101 Ala. 531; Burton v. State, 107 Ala. 108; Rice v. Westcott, 108 Ala. 353; Harper v. State, 109 Ala. 28, 66. **Sufficient to set out law as amended.**—Wilkerson v. Ketler, 59 Ala. 306; State v. Warford, 84 Ala. 15; Dunbar v. Frazer, 78 Ala. 538; Montgomery v. State, 107 Ala. 372. **Only applies to law which is strictly amendatory or revisory.**—Ex parte Pollard, 40 Ala. 77; State v. Rogers, 107 Ala. 444. **If the several clauses are perfectly distinct and separable, and are not interdependent, one part of a law may stand while the other is expunged.**—M. & O. R. Co. v. State, 29 Ala. 573; Ex parte Pollard, 40 Ala. 77; Lowndes Co. v. Hunter, 49 Ala. 507; Rogers v. Torbut, 58 Ala. 523; Ex parte Moore, 62 Ala. 471; Powell v. State, 69 Ala. 10; Ballentyne v. Wickersham, 75 Ala. 533; Stein v. Leeper, 78 Ala. 517; Montgomery v. State, 88 Ala. 141; Ex parte Cowert, 92 Ala. 94; Barnhill v. Teague, 96 Ala. 207; Woolf v. Taylor, 98 Ala. 254; State v. Hartford Ins. Co., 99 Ala. 221; Bradley v. State, 99 Ala. 177; Yerby v. Cochrane, 101 Ala. 541; Harper v. State, 109 Ala. 28, 66; Shehane v. Bailey, 110 Ala. 308.

§3. Senators and representatives shall be elected by the qualified electors, on the first Monday in August, eighteen hundred and seventy-six; and one-half of the senators and all the representatives shall be elected every two

years thereafter, unless the general assembly shall change the time of holding elections. The terms of office of the senators shall be four years, and that of the representatives two years, commencing on the day after the general election, except as otherwise provided in this Constitution.

§4. Senators shall be at least twenty-seven years of age, and representatives twenty-one years of age; they shall have been citizens and inhabitants of this State for three years, and inhabitants of their respective counties or districts one year next before their election, if such county or district shall have been so long established; but if not, then of the county or district from which the same shall have been taken; and they shall reside in their respective counties or districts during their terms of service.

§5. The general assembly shall meet biennially, at the capitol, in the senate chamber and in the hall of the house of representatives (except in cases of destruction of the capitol, or epidemics, when the governor may convene them at such place in the State as he may deem best) on the day specified in this Constitution, or on such other day as may be prescribed by law; and shall not remain in session longer than sixty days at the first session held under this Constitution, nor longer than fifty days at any subsequent session.

Legislature sits fifty working days, excluding Sundays and days on which, by concurrent resolution, the two houses do not sit.—Moog v. Randolph, 77 Ala. 597; Sayre v. Polland, 77 Ala. 608; Ex parte Cowert, 92 Ala. 94.

§6. The pay of the members of the general assembly shall be four dollars per day, and ten cents per mile in going to and returning from the seat of government, to be computed by the nearest usual route traveled.

§7. The general assembly shall consist of not more than thirty-three senators, and not more than one hundred members of the house of representatives; to be apportioned among the several districts and counties as prescribed in this Constitution.

§8. The senate, at the beginning of each regular session, and at such other times as may be necessary, shall elect one of its members president thereof; and the house of representatives, at the beginning of each regular session, shall elect one of its members as speaker; and the president of the senate and the speaker of the house of representatives shall hold their offices respectively until their successors are elected and qualified. Each house shall choose its own officers, and shall judge of the election, returns and qualifications of its members.

§9. At the general election in the year eighteen hundred and seventy-six, senators shall be elected in the even-numbered districts to serve for two years, and in the odd-numbered districts to serve for four years, so that thereafter one-half the senators may be chosen biennially. Members of the house of representatives shall be elected at the general election every second year. The time of service of senators and representatives shall begin on the day after their election, except the terms of those elected in the year eighteen hundred and seventy-six, which shall not begin until the term of the present members shall have expired. Whenever a vacancy shall occur in either house, the governor for the time being shall issue a writ of election to fill such vacancy for the remainder of the term.

§10. A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the

attendance of absent members, in such manner, and under such penalties, as each house may provide.

§11. Each house shall have power to determine the rules of its proceedings, and to punish its members, or other persons, for contempt or disorderly behavior in its presence; to enforce obedience to its process; to protect its members against violence, or offers of bribes or corrupt solicitation; and, with the concurrence of two-thirds of either house, to expel a member, but not a second time for the same cause; and shall have all the powers necessary for the legislature of a free State.

§12. A member of either house expelled for corruption shall not thereafter be eligible to either house, and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense.

§13. Each house shall keep a journal of its proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-tenth of the members present, be entered on the journals. Any member of either house shall have liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the journals.

Journal is a public record of which the courts will take judicial notice.—Jones v. Hutchinson, 43 Ala. 721; Moody v. State, 48 Ala. 115; Henderson v. State, 94 Ala. 95. **Must show affirmatively that the yeas and nays were taken; no other evidence received.**—State v. Buckley, 54 Ala. 599; Walker v. Griffith, 60 Ala. 361. **Except where the Constitution requires that a matter shall appear on the journal, its performance is presumed, unless the contrary affirmatively appears.**—Harrison v. Gordy, 57 Ala. 49; Perry Co. v. S. M. & M. R. Co., 58 Ala. 546; Walker v. Griffith, 60 Ala. 361; Clarke v. Jack, 60 Ala. 271; Hall v. State, 82 Ala. 562; Hare v. Kennerly, 83 Ala. 608. **Notice of a local law will be presumed** if the journal does not show the contrary.—Harrison v. Gordy, 57 Ala. 49; Clarke v. Jack, 60 Ala. 271; Walker v. Griffith, 60 Ala. 361; Hall v. State, 82 Ala. 562.

§14. Members of the general assembly shall, in all cases, except treason, felony, violation of their oath of office, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

§15. The doors of each house shall be open, except on such occasions as, in the opinion of the house, may require secrecy.

§16. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

§17. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by election by the people.

A member of the legislature cannot be elected by that body judge of a new circuit then created.—State v. Porter, 1 Ala. 688. **Nor appointed police judge of the city of Birmingham, the same being a civil office of profit under the State, created by the body of which he was a member.**—Montgomery v. State, 107 Ala. 372.

§18. No person hereafter convicted of embezzlement of the public money, bribery, perjury or other infamous crime, shall be eligible to the general assembly, or capable of holding any office of trust or profit in this State.

§19. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

Compliance presumed unless the contrary shown.—State v. Buckley, 54 Ala. 599. **Bill may be amended, or a substitute adopted, so long as the original purpose be not changed.**—State v. Buckley, 54 Ala. 599; Harrison v. Gordy, 57 Ala. 49; Stein v. Leeper, 78 Ala. 517; Abernathy v. State, 78 Ala. 411; Donnelly v. State, 78 Ala. 453; Dunbar v. Frazer, 78 Ala. 538; Hall v. State, 82 Ala. 562.

§20. No bill shall become a law until it shall have been referred to a committee of each house and returned therefrom.

Compliance presumed unless contrary shown.—State v. Buckley, 54 Ala. 599. **Committee may report an amendatory or substitutional bill.**—State v. Buckley 54 Ala. 599.

§21. Every bill shall be read on three different days in each house; and no bill shall become a law unless, on its final passage, it be read at length, and the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journals, and a majority of each house be recorded thereon as voting in its favor, except as otherwise provided in this Constitution.

A bill **becomes a law only when it has gone through all the required forms;** court may search the journal, the record.—Jones v. Hutchinson, 43 Ala. 721; Moody v. State, 48 Ala. 115; Moog v. Randolph, 77 Ala. 597; Sayre v. Pollard, 77 Ala. 608. **Does not require that everything to become law shall be read three times;** a Code may be enacted by bill read three times.—Dew v. Cunningham, 28 Ala. 466; Hoover v. State, 59 Ala. 57; Bales v. State, 63 Ala. 30. **Presumption is that bill was read three times.**—Walker v. Griffith, 60 Ala. 361. **Yeas and nays must appear affirmatively from the journal.**—State v. Buckley, 54 Ala. 599; Walker v. Griffith, 60 Ala. 361. **"Final passage"** is the vote on its passage in either house after three readings on three different days in that house.—State v. Buckley, 54 Ala. 599. **If a statute as engrossed and signed varies materially in substance and legal effect from the bill as passed, neither is a constitutional enactment.**—Jones v. Hutchinson, 43 Ala. 721; Moody v. State, 48 Ala. 115; Moog v. Randolph, 77 Ala. 597; Sayre v. Pollard, 77 Ala. 608; Stein v. Leeper, 78 Ala. 517; Abernathy v. State, 78 Ala. 453; Dunbar v. Frazer, 78 Ala. 538.

§22. No amendment to bills by one house shall be concurred in by the other, except by a vote of a majority thereof, taken by yeas and nays, and the names of those voting for and against recorded upon the journals; and reports of committees of conference shall in like manner be adopted in each house.

Yeas and nays must appear on the journal; compliance with certain other requirements presumed.—State v. Buckley, 54 Ala. 599.

§23. No special or local law shall be enacted for the benefit of individuals or corporations, in cases which are or can be provided for by a general law, or where the relief sought can be given by any court of this State; nor shall the operation of any general law be suspended by the general assembly for the benefit of any individual, corporation, or association.

Definition of a general law.—Holt v. Mayor, 111 Ala. 369; Anniston v. So. Ry. Co., 112 Ala. 557. **Whether a case can be provided for by a general law is a question of legislative discretion.**—Clarke v. Jack, 60 Ala. 271. It would seem that **"corporations" means private corporations.**—Ex parte City Council, 64 Ala. 463. **Does not prevent the exception** from a general law **of persons or things otherwise included.**—Ex parte City Council, 64 Ala. 463. **Law authorizing the people to vote on the question of removal of county-site is not a "special or local law."**—Clarke v. Jack, 60 Ala. 271. **Divorce cannot be granted by special law.**—Jones v. Jones, 95 Ala. 443. Authorizing county superintendent to pay debts contracted by school trustees, **is a healing statute and constitutional.**—McKennie v. Gordon, 68 Ala. 442. **Quære, as to the power to pass special laws for the sale of property of minors, etc., since the adoption of this Constitution.**—Mumford v. Pearce, 70 Ala. 452. See Art. IV., Sec. 1. **Suspending general law.**—State v. Webb, 110 Ala. 214.

§24. No local or special law shall be passed on a subject which cannot be provided for by a general law, unless notice of the intention to apply there-

for shall have been published in the locality where the matter or things to be affected may be situated; which notice shall be at least twenty days prior to the introduction into the general assembly of such bill, and the evidence of such notice having been given shall be exhibited to the general assembly before such bill shall be passed. *Provided*, that the provisions of this Constitution, as to special or local laws, shall not apply to public or educational institutions of or in this State, nor to industrial, mining, immigration or manufacturing corporations or interests, or corporations for constructing canals, or improving navigable rivers or harbors of this State.

Where the journal does not show the contrary, notice of a local law is presumed.—Harrison v. Gordy, 57 Ala. 49; Clarke v. Jack, 60 Ala. 271; Walker v. Griffith, 60 Ala. 361; Hall v. Steele, 82 Ala. 562; Jennings v. Russell, 92 Ala. 603. **Does not apply to curative or healing statutes.**—McKennie v. Gordon, 68 Ala. 442; State v. Webb, 110 Ala. 214. **Definition of general law.**—Holt v. Mayor, 111 Ala. 369; Anniston v. So. Ry. Co., 112 Ala. 557.

§25. The general assembly shall pass general laws, under which local and private interests shall be provided for and protected.

Definition of a general law.—Holt v. Mayor, 111 Ala. 369; Anniston v. So. Ry. Co., 112 Ala. 557.

§26. The general assembly shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift-enterprise tickets, or tickets in any scheme in the nature of a lottery, in this State; and all acts, or parts of acts, heretofore passed by the general assembly of this State, authorizing a lottery or lotteries, and all acts amendatory thereof, or supplemental thereto, are hereby avoided.

Loiseau v. State, Ala. (22 So. 138).

§27. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the general assembly, after the titles have been publicly read immediately before signing, and the fact of signing shall be entered on the journal.

§28. The general assembly shall prescribe by law the number, duties, and compensation of the officers and employes of each house; and no payment shall be made from the state treasury, or be in any way authorized to any person, except to an acting officer or employee, elected or appointed in pursuance of law.

§29. No bill shall be passed giving any extra compensation to any public officer, servant or employee, agent or contractor, after the service shall have been rendered, or contract made; nor shall any officer of the State bind the State to the payment of any sum of money but by authority of law.

§30. All stationery, printing, paper, and fuel used in the legislative and other departments of government, shall be furnished, and the printing, binding, and distribution of laws, journals, department reports, and all other printing and binding, and repairing and furnishing the halls and rooms used for the meetings of the general assembly and its committees, shall be performed under contract, to be given to the lowest responsible bidder below a maximum price, and under such regulations as shall be prescribed by law; no member or officer of any department of the government shall be in any way interested in such contracts, and all such contracts shall be subject to the approval of the governor, state auditor, and state treasurer.

Not self-executing.—Brown. v. Seay, 86 Ala. 122.

§31. All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments, as in other bills.

Mandatory.—Perry Co. v. S. M. & M. R. Co., 58 Ala. 546. **"Raising revenue"** is the levy of a tax as the means of collecting revenue whether receipts are increased or diminished.—Perry Co. v. S. M. &. M. R. Co., 58 Ala. 546. A statute **regulating the granting of licenses to retail is not a bill to raise revenue.**—Dunbar v. Frazer, 78 Ala. 538.

§32. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the State, interest on the public debt, and for the public schools; all other appropriations shall be made by separate bills, each embracing but one subject.

Appropriation for a local school must be by separate bill.—Woolf v. Taylor, 98 Ala. 254.

§33. No money shall be paid out of the treasury, except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof; and a regular statement and account of receipts and expenditures of all public moneys shall be published annually, in such manner as may be by law directed.

Conservative, not restrictive of legislative power.—Smith v. Speed, 50 Ala. 276. **A resolution of the senate is not a law.**—Reynolds v. Blue, 47 Ala. 711.

§34. No appropriation shall be made to any charitable or educational institution not under the absolute control of the State, other than normal schools established by law for the professional training of teachers for the public schools of the State, except by a vote of two-thirds of all the members elected to each house.

Elsberry v. Seay, 83 Ala. 614.

§35. No act of the general assembly shall authorize the investment of any trust fund by executors, administrators, guardians, and other trustees, in the bonds or stock of any private corporation; and any such acts now existing are avoided, saving investments heretofore made.

§36. The power to change the venue, in civil and criminal causes, is vested in the courts, to be exercised in such manner as shall be provided by law.

§37. When the general assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the governor calling such session.

§38. No State office shall be continued or created for the inspection or measuring of any merchandise, manufacture, or commodity; but any county or municipality may appoint such officers, when authorized by law.

§39. No act of the general assembly changing the seat of government of the State shall become a law until the same shall have been submitted to the qualified electors of the State at a general election, and approved by a majority of such electors voting on the same; and such act shall specify the proposed new location.

§40. A member of the general assembly, who shall corruptly solicit, demand, or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation, or person, any money, office, appointment, employment, reward, thing of value or enjoyment, or of personal advantage, or promise thereof, for his vote or official influence, or for withholding the same; or with an understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby; or who shall solicit or demand any such money or other advantage, matter or thing aforesaid, for another, as the consideration of his vote or official influence,

or for withholding the same; or shall give or withhold his vote or influence, in consideration of the payment or promise of such money, advantage, matter, or thing, to another, shall be guilty of bribery within the meaning of this Constitution, and shall incur the disabilities provided thereby for such offense, and such additional punishment as is, or shall be, provided by law.

§41. Any person who shall, directly or indirectly, offer, give, or promise any money or thing of value, testimonial, privilege, or personal advantage, to any executive or judicial officer, or member of the general assembly, to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as shall be provided by law.

§42. The offense of corrupt solicitation of members of the general assembly, or of public officers of this State, or of any municipal division thereof, and any occupation or practice of solicitation of such members, or officers, to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment.

§43. A member of the general assembly, who has a personal or private interest in any measure or bill, proposed or pending before the general assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon.

§44. In all elections by the general assembly, the members shall vote *viva voce*, and the votes shall be entered on the journals.

§45. It shall be the duty of the general assembly to pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by the parties who may choose that mode of adjustment.

§46. It shall be the duty of the general assembly, at its first session after the ratification of this Constitution, and within every subsequent period of ten years, to make provision by law for the revision, digesting and promulgation of the public statutes of this State of a general nature, both civil and criminal.

§47. The general assembly shall pass such penal laws as they may deem expedient to suppress the evil practice of dueling.

§48. It shall be the duty of the general assembly to regulate by law the cases in which deductions shall be made from the salaries of public officers, for neglect of duty in their official capacities, and the amount of such deductions.

§49. It shall be the duty of the general assembly to require the several counties of this State to make adequate provision for the maintenance of the poor.

§50. The general assembly shall not have power to authorize any municipal corporation to pass any laws inconsistent with the general laws of this State.

"General law" is a law operative throughout the entire State; if there are excepted parts, the law is public, not general.—Holt v. Mayor, 111 Ala. 369; Anniston v. So. Ry. Co., 112 Ala. 557. **Not intended to prevent the delegation to counties of quasi legislative powers.**—Askew v. Hale Co., 54 Ala. 639; Stanfill v. Dallas Co., 80 Ala. 287; Dunn v. Wilcox Co., 85 Ala. 144. **Nor to limit legislature in conferring police powers on municipal corporations.**—Ex parte Cowert, 92 Ala. 94.

§51. In the event of annexation of any foreign territory to this State, the general assembly shall enact laws extending to the inhabitants of the acquired territory all the rights and privileges which may be required by the

terms of the acquisition, anything in this Constitution to the contrary notwithstanding.

§52. The general assembly shall not tax the property, real and personal, of the State, counties, or other municipal corporations, or cemeteries; nor lots in incorporated cities or towns, or within one mile of any city or town, to the extent of one acre, nor lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; nor such property, real or personal, to an extent not exceeding twenty-five thousand dollars in value, as may be used exclusively for agricultural or horticultural associations of a public character.

§53. The general assembly shall by law prescribe such rules and regulations as may be necessary to ascertain the value of personal and real property exempted from sale under legal process by this Constitution, and to secure the same to the claimant thereof as selected.

§54. The State shall not engage in works of internal improvement, nor lend money or its credit in aid of such; nor shall the State be interested in any private or corporate enterprise, or lend money or its credit to any individual, association, or corporation.

§55. The general assembly shall have no power to authorize any county, city, town, or other subdivision of this State, to lend its credit, or to grant public money or thing of value, in aid of, or to any individual, association, or corporation whatsoever, or to become a stockholder in any such corporation, association, or company, by issuing bonds, or otherwise.

No power to authorize a county to build a railroad bridge whether to be used free of rent by the railroad, or to be leased to it.—Garland v. Board of Revenue, 87 Ala. 223.

§56. There can be no law of this State impairing the obligation of contracts by destroying or impairing the remedy for their enforcement; and the general assembly shall have no power to revive any right or remedy which may have become barred by lapse of time, or by any statute of this State.

Substantially lessening or impairing the value of the contract is what is forbidden; no reference to the degree of impairment.—Edwards v. Williamson, 70 Ala. 145; Adams v. Creen, 100 Ala. 218. **The remedy may be changed, so it remains fully adequate to the enforcement of the contract.**—Edwards v. Williamson, 70 Ala. 145; Osborn v. Johnson W. P. Co., 99 Ala. 309. **Does not apply to claims against the State, or against a special fund controlled by it as the fine and forfeiture fund.**—Palmer v. Fitts, 51 Ala. 489; Sessions v. Boykin, 78 Ala. 328; Brown v. Parris, 93 Ala. 314; Harold v. Herrington, 95 Ala. 395; See also citations to Art. I., Sec. 23.

ARTICLE V.

EXECUTIVE DEPARTMENT.

§1. The executive department shall consist of a governor, secretary of state, state treasurer, state auditor, attorney-general and superintendent of education, and a sheriff for each county.

Fox v. McDonald, 101 Ala. 51. See citations to Art. III.

§2. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled "The Governor of the State of Alabama."

Mandamus lies to compel the governor to perform his ministerial duties.—T. & C. R. Co. v. Moore, 36 Ala. 371; State v. Cobb, 64 Ala. 127. Power of appointment does not belong inherently to the executive.—Fox v. McDonald, 101 Ala. 51.

§3. The governor, secretary of state, state treasurer, state auditor, and attorney-general shall be elected by the qualified electors of this State, at the same time and places appointed for the election of members of the general assembly.

§4. The returns of every election for governor, secretary of state, state auditor, state treasurer, and attorney-general shall be sealed up and transmitted by the returning officers to the seat of government, directed to the speaker of the house of representatives, who shall, during the first week of the session to which said returns shall be made, open and publish them in the presence of both houses of the general assembly in joint convention. The person having the highest number of votes for either of said offices shall be declared duly elected; but if two or more shall have an equal and the highest number of votes for the same office, the general assembly, by joint vote, without delay, shall choose one of said persons for said office. Contested elections for governor, secretary of state, state auditor, state treasurer, and attorney-general shall be determined by both houses of the general assembly, in such manner as may be prescribed by law.

§5. The governor, secretary of state, state treasurer, state auditor, and attorney-general shall hold their respective offices for the term of two years from the time of their installation in office, and until their successors shall be elected and qualified.

§6. The governor shall be at least thirty years of age when elected, and shall have been a citizen of the United States ten years, and a resident citizen of this State at least seven years next before the day of his election.

§7. The governor, secretary of state, state treasurer, state auditor, and attorney-general shall reside at the seat of government of this State during the time they continue in office, except in case of epidemics; and they shall receive compensation for their services, which shall be fixed by law, and which shall not be increased or diminished during the term for which they shall have been elected.

§8. The governor shall take care that the laws be faithfully executed.

§9. The governor may require information in writing, under oath, from the officers of the executive department, on any subject relating to the duties of their respective offices; and he may, at any time, require information in writing, under oath, from all officers and managers of State institutions, upon any subject relating to the condition, management, and expenses of their respective offices and institutions; and any such officer or manager who makes a false report, shall be guilty of perjury, and punished accordingly.

§10. The governor may, by proclamation, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if, since their last adjournment, that shall have become dangerous from an enemy, or from infectious or contagious diseases; and he shall state specifically in such proclamation each matter concerning which the action of that body is deemed necessary.

§11. The governor shall, from time to time, give to the general assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient; and, at the commencement of each session of the general assembly, and at the close of his term of office,

give information, by written message, of the condition of the State; and he shall account to the general assembly, as may be prescribed by law, for all moneys received and paid out by him, from any funds subject to his order, with the vouchers therefor; and he shall, at the commencement of each regular session, present to the general assembly estimates of the amount of money required to be raised by taxation for all purposes.

§12. The governor shall have power to remit fines and forfeitures, under such rules and regulations as may be prescribed by law, and after conviction, to grant reprieves, commutation of sentence, and pardons, except in cases of treason and impeachment; but pardons, in cases of murder, arson, burglary, rape, assault with intent to commit rape, perjury, forgery, bribery, and larceny, shall not relieve from civil and political disability, unless specifically expressed in the pardon. Upon conviction of treason, the governor may suspend the execution of the sentence, and report the same to the general assembly at the next regular session, when the general assembly shall either pardon, commute the sentence, direct its execution, or grant further reprieve. He shall communicate to the general assembly, at every regular session, each case of reprieve, commutation, or pardon granted, with his reasons therefor, stating the name and crime of the convict, the sentence, its date, and the date of the reprieve, commutation, or pardon.

Fines and forfeitures can only be remitted by the governor.—Haley v. Clark, 26 Ala. 439. Power confined to offenses for which there may be conviction and punishment.—M. & G. R. Co. v. Peebles, 47 Ala. 317.

§13. Every bill which shall have passed both houses of the general assembly, shall be presented to the governor; if he approve, he shall sign it; but, if not, he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large upon the journals; and the house to which such bill shall be returned shall proceed to reconsider it; if, after such reconsideration, a majority of the whole number elected to that house shall vote for the passage of such bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered; if approved by a majority of the whole number elected to that house, it shall become a law; but in such case the votes of both houses shall be determined by yeas and nays; and the names of the members voting for or against the bill shall be entered upon the journals of each house respectively. If any bill shall not be returned by the governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return, in which case it shall not be a law. And every vote, order, or resolution, to which the concurrence of both houses may be necessary (except questions of adjournment, and of bringing on elections by the two houses, and of amending this Constitution), shall be presented to the governor, and, before the same shall take effect, be approved by him, or, being disapproved, shall be repassed by both houses according to the rules and limitations prescribed in the case of a bill.

A bill signed by the governor materially differing from the bill as passed, does not become a law.—Jones v. Hutchinson, 43 Ala. 721; Moody v. State, 48 Ala. 115; Moog v. Randolph, 77 Ala. 597; Sayre v. Pollard, 77 Ala. 608; Stein v. Leeper, 78 Ala. 517; Abernathy v. State, 78 Ala. 411.

§14. The governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items; and the

part or parts of the bill approved shall be the law, and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto; and he shall, in writing, state specifically the item or items he disapproves.

§15. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, absence from the State, or other disability, the president of the senate shall exercise all the power and authority appertaining to the office of governor, until the time appointed for the election of governor shall arrive, or until the governor who is absent, or impeached, shall return or be acquitted, or other disability be removed; and if during such vacancy in the office of governor the president of the senate shall be impeached, removed from office, refuse to qualify, die, resign, be absent from the State, or be under any other disability, the speaker of the house of representatives shall, in like manner, administer the government. If the governor shall be absent from the State over twenty days, the secretary of state shall notify the president of the senate, who shall enter upon the duties of governor; and if the governor and president of the senate shall both be absent from the State over twenty days, the secretary of state shall notify the speaker of the house of representatives; and in such case he shall enter upon and discharge the duties of governor, until the return of the governor or president of the senate.

§16. The president of the senate and speaker of the house of representatives shall, during the time they respectively administer the government, receive the same compensation which the governor would have received if he had been employed in the duties of his office. *Provided*, that if the general assembly shall be in session during such absence, they, or either of them, shall receive no compensation as members of the general assembly while acting as governor.

§17. No person shall, at one and the same time, hold the office of governor of this State and any other office, civil or military, either under this State, the United States, or any other State or government, except as otherwise provided in this Constitution.

§18. The governor shall be commander-in-chief of the militia and volunteer forces of this State, except when they shall be called into the service of the United States, and he may call out the same to execute the laws, suppress insurrection, and repel invasion; but he need not command in person unless directed to do so by a resolution of the general assembly; and when acting in the service of the United States he shall appoint his staff, and the general assembly shall fix his rank.

§19. No person shall be eligible to the office of secretary of state, state treasurer, state auditor, or attorney-general, unless he shall have been a citizen of the United States at least seven years, and shall have resided in this State at least five years next preceding his election, and shall be at least twenty-five years old when elected.

§20. There shall be a great seal of the State, which shall be used officially by the governor; and the seal now in use shall continue to be used until another shall have been adopted by the general assembly. The said seal shall be called the "Great Seal of the State of Alabama."

§21. The secretary of state shall be the custodian of the seal of the State, and shall authenticate therewith all official acts of the governor, his approval of laws and resolutions excepted. He shall keep a register of the official acts of the governor, and when necessary, shall attest them, and lay copies of the same, together with copies of all papers relative thereto, before either house of the general assembly, when required to do so, and shall perform such other duties as may be prescribed by law.

§22. All grants and commissions shall be issued in the name and by the authority of the State of Alabama, sealed with the great seal, and signed by the governor, and countersigned by the secretary of state.

§23. Should the office of secretary of state, state treasurer, state auditor, attorney-general, or superintendent of education become vacant for any cause specified in section fifteen of this article, the governor shall fill the vacancy, until the disability is removed, or a successor elected and qualified.

§24. The state treasurer, state auditor, and attorney-general shall perform such duties as may be prescribed by law. The state treasurer and state auditor shall, every year, at a time the general assembly may fix, make a full and complete report to the governor, showing all receipts and disbursements of revenue of every character, all claims audited and paid by the State, by items, and all taxes and revenue collected and paid into the treasury, and from what sources; and they shall make reports oftener on any matter pertaining to their office, if required to do so by the governor or the general assembly.

§25. The state auditor, state treasurer and secretary of state shall not, after the expiration of the terms of those now in office, receive to their use any fees, costs, perquisites of office, or compensation, other than their salaries as prescribed by law; and all fees that may be payable by law, for any services performed by either of such officers, shall be paid in advance into the state treasury.

§26. A sheriff shall be elected in each county, by the qualified electors thereof, who shall hold his office for the term of four years, unless sooner removed, and shall be ineligible to such office as his own successor. *Provided*, that sheriffs elected on the first Monday in August, 1877, or at such other time as may be prescribed by law for the election in that year, shall hold their offices for the term of three years, and until their successors shall be elected and qualified. In the year 1880, at the general election for members to the general assembly, sheriffs shall be elected for four years as herein provided. Vacancies in the office of sheriff shall be filled by the governor, as in other cases; and the person appointed shall continue in office until the next general election in the county for sheriff, as provided by law.

ARTICLE VI.

JUDICIAL DEPARTMENT.

§1. The judicial power of the State shall be vested in the senate sitting as a court of impeachment, a supreme court, circuit courts, chancery courts, courts of probate, such inferior courts of law and equity, to consist of not more than five members, as the general assembly may from time to time establish, and such persons as may be by law invested with powers of a judicial nature.

The courts named are constitutional and cannot be abolished by legislature; inferior courts are statutory, may be abolished and term and salary of judge ends with the court.—Perkins v. Corbin, 45 Ala. 103; Ex parte Roundtree, 51 Ala. 42. **An inferior court is one whose judgments can be reviewed by a higher tribunal, the circuit or supreme court.**—Nugent v. State, 18 Ala. 521: Perkins v. Corbin, 45 Ala. 103; Ex parte Roundtree, 51 Ala. 42; Sanders v. State, 55 Ala. 42. **Competent to divide a circuit court into two divisions, each sitting in a different part of the county.**—Lowery v. State, 103 Ala. 50; Triest v. Enslen, 106 Ala. 180.

§2. Except in cases otherwise directed in the Constitution, the supreme court shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may from time to time be prescribed by law; *Provided*, that said court shall have power to issue writs of injunction, habeas corpus, quo warranto, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions.

The supreme court **has only appellate jurisdiction, with exceptions named.**—State v. Flinn, Minor 8; Johnston v. Atwood, 2 Stew. 225. **Rendition of judgment against sureties on an appeal bond** is not assuming original jurisdiction.—Johnston v. Atwood, 2 Stew. 225. **Legislature can control appellate, but not original jurisdiction; the latter being constitutional.**—Thompson v. Lea, 28 Ala. 453; Ex parte Bibb, 44 Ala. 140; Ex parte Candee, 48 Ala. 386. **Jurisdiction is in general, revisory, and application must be first refused by inferior court; but supreme court may first award either of the designated writs.**—Davis v. Tuscumbia R. Co., 4 S. & P. 421; State v. Paul, 5 S. & P. 40; Ex parte Simonton, 9 Port. 383; State v. Porter, 1 Ala. 688; John v. State, 1 Ala. 95; Ex parte Mansony, 1 Ala. 98; State v. Williams, 1 Ala. 342; Ex parte Tarleton, 2 Ala. 36; Ex parte Chaney, 8 Ala. 424; Ex parte Smith, 23 Ala. 94; Ex parte City Council, 24 Ala. 98; Ex parte Henry, 24 Ala. 638; Ex parte Pickett, 24 Ala. 91; Ex parte Burnett, 30 Ala. 461; Thompson v. Lea, 28 Ala. 453; Ex parte Floyd, 40 Ala. 116; Ex parte Henderson, 43 Ala. 392; Ex parte Bibb, 44 Ala. 140; Ex parte Candee, 48 Ala. 386; Ex parte Jones, 94 Ala. 33. **Will award original mandamus** to compel the speaker to certify to the pay of a legislator.—Ex parte Pickett, 24 Ala. 91. **When may issue writ of prohibition.**—Ex parte Smith. 23 Ala. 94; Ex parte Walker, 25 Ala. 81; Ex parte Green, 29 Ala. 52; Ex parte Russell, 29 Ala. 717; Ex parte Roundtree, 51 Ala. 42.

§3. The supreme court shall be held at the seat of government, but if that shall have become dangerous from any cause, it may adjourn to a different place.

State v. Tally, 102 Ala. 25, 33.

§4. The State shall be divided by the general assembly into convenient circuits, not to exceed eight in number, unless increased by a vote of two-thirds of the members of each house of the general assembly, and no circuit shall contain less than three nor more than twelve counties; and for each circuit there shall be chosen a judge, who shall, for one year next preceding his election, and during his continuance in office, reside in the circuit for which he is elected.*

Within prescribed limits circuits may be changed at will.—Ex parte Lusk, 82 Ala. 519.

§5. The circuit court shall have original jurisdiction in all matters, civil and criminal, within the State, not otherwise excepted in this Constitution; but in civil cases only when the matter or sum in controversy exceeds fifty dollars.

Original jurisdiction is constitutional and does not require legislation to effectuate it; appellate is statutory and limited.—Carew v. Lillienthall, 50 Ala. 44; Dunbar v. Frazer, 78 Ala. 529. **Has no chancery jurisdiction except power to issue injunctions.**—Nugent v. State, 18 Ala. 521. **Summary proceedings against public officer for dereliction of duty is not a "civil cause" within this section.**—Huggins v. Ball, 19 Ala. 587; Nowlin v. McCalley, 31 Ala. 678. **If complaint shows cause of action for only a nominal sum, court has no jurisdiction.**—Cahuzac v. Samini, 29 Ala. 288. **If debt is in-**

*The words, "two-thirds of the members of each house," construed by the senate to mean "two-thirds of each house present and voting."—Journal 1892-93, pp. 708-710.

creased to more than fifty dollars, although by interest, **court has jurisdiction.**—Hogan v. Odam, 3 Stew. 59; Hargrove v. Smith, 1 Ala. 80. **Between fifty and one hundred dollars the jurisdiction is concurrent with justices of the peace.**—Carew v. Lillienthal, 50 Ala. 44; K. C., M. & B. R. Co. v. Whitehead, 109 Ala. 495. **The amount in controversy is the amount claimed by the plaintiff, and not the amount of the recovery.**—Haws v. Morgan, 59 Ala. 508; M. & C. R. Co. v. Hembree, 84 Ala. 182; Camp v. Marion Co., 91 Ala. 240.

§6. A circuit court shall be held in each county in the State at least twice in every year, and the judges of the several circuits may hold courts for each other, when they deem it expedient, and shall do so when directed by law; *Provided*, that the judges of the several circuit courts shall have power to issue writs of injunction returnable into courts of chancery.

§7. The general assembly shall have power to establish a court or courts of chancery, with original and appellate jurisdiction. The State shall be divided by the general assembly into convenient chancery divisions, not exceeding three in number, unless an increase shall be made by a vote of two-thirds of each house of the general assembly, taken by yeas and nays and entered upon the journals; and the divisions shall be divided into districts; and for each division there shall be a chancellor, who shall, at the time of his election or appointment, and during his continuance in office, reside in the division for which he shall have been elected or appointed.

Nugent v. State, 18 Ala. 521.

§8. A chancery court shall be held in each district, at a place to be fixed by law, at least once in each year; and the chancellors may hold courts for each other, when they deem it necessary.

Does not confine the venue to county of defendant's residence or in which the property is located.—Fulmore v. Brady, 44 Ala. 218.

§9. The general assembly shall have power to establish in each county within the State a court of probate, with general jurisdiction for the granting of letters testamentary and of administration, and for orphans' business.

A specific grant of unrestricted and general jurisdiction over the granting of letters testamentary and of administration and for orphans' business.—Ikelheimer v. Chapman, 32 Ala. 676; Gray v. Cruise, 36 Ala. 559; Coltart v. Allen, 40 Ala. 155; Balkum v. State, 40 Ala. 671; Carswell v. Spencer, 44 Ala. 204; Hall v. Hall, 47 Ala. 290; Wright v. Ware, 50 Ala. 549; Bean v. Chapman, 62 Ala. 58; Sims v. Waters, 65 Ala. 442; Hatchett v. Billingslea, 65 Ala. 16; Steele v. Tutwiler, 68 Ala. 107; Landford v. Dunklin, 71 Ala. 594; Morgan v. Casey, 73 Ala. 222; Barclift v. Treece, 77 Ala. 528. **But there is a class of cases involving testamentary trusts and powers of which the probate court has not jurisdiction.**—Ex parte Dickson, 64 Ala. 188; Penny v. Werborn, 72 Ala. 58; Foxworth v. White, 72 Ala. 224; Hinson v. Williamson, 74 Ala. 180; Creamer v. Holbrook, 99 Ala. 52. **Power of chancery court to appoint administrator ad litem.**—Malone v. Hill, 60 Ala. 225. **No prohibition against conferring on probate courts judicial cognizance of matters also within the jurisdiction of other courts.**—Balkum v. State, 40 Ala. 671; Randolph v. Baldwin, 41 Ala. 305. **The office of probate judge is the creature of statute under which it exists, and by which its character is defined.**—Thompson v. Holt, 52 Ala. 491.

§10. The judges of the supreme court, circuit courts, and chancellors shall, at stated times, receive for their services a compensation which shall not be diminished during their official terms; but they shall receive no fees or perquisites, nor hold any office (except judicial offices) of profit or trust under this State or the United States, or any other power, during the term for which they have been elected.

Protection extended only to judges of the supreme and circuit courts and chancellors; not to judges of inferior statutory courts.—Perkins v. Corbin, 45 Ala. 103; Ex parte Rountree, 51 Ala. 42; Ex parte Amos, 51 Ala. 57.

§11. The supreme court shall consist of one chief justice and such number of associate justices as may be prescribed by law.

§12. The chief justice and associate justices of the supreme court, judges of the circuit courts, probate courts, and chancellors shall be elected by the qualified electors of the State, circuits, counties, and chancery divisions, for which such courts may be established, at such times as may be prescribed by law.

Legislature cannot make the judge of the circuit court, in whose circuit an inferior court is established, the judge thereof.—Ex parte Roundtree, 51 Ala. 42. **The office of probate judge is statutory; a bond may be required of him for the faithful performance of ministerial duties.**—Thompson v. Holt, 52 Ala. 491.

§13. The judges of such inferior courts of law and equity as may be by law established, shall be elected or appointed in such mode as the general assembly may prescribe.

County courts may be established, of which the judge of probate is ex officio judge.—Balkum v. State, 40 Ala. 671; Randolph v. Baldwin, 41 Ala. 305. **City courts of which the judges may be elected or appointed, and the court and office** abolished at will.—Perkins v. Corbin, 45 Ala. 103. **And jurisdiction of circuit court may be conferred upon judge of probate.**—Moore v. State, 68 Ala. 360.

§14. The judges of the supreme court, circuit courts, and chancellors, and the judges of city courts shall have been citizens of the United States and of this State for five years next preceding their election or appointment, and shall be not less than twenty-five years of age, and learned in the law.

§15. The chief justice and associate justices of the supreme court, circuit judges, chancellors, and probate judges shall hold office for the term of six years, and until their successors are elected or appointed and qualified; and the right of such judges and chancellors to hold their offices for the full term hereby prescribed shall not be affected by any change hereafter made by law in any circuit, division, or county in the mode or time of election.

§16. The judges of the supreme court shall, by virtue of their offices, be conservators of the peace throughout the State; the judges of the circuit courts, within their respective circuits, and the judges of the inferior courts within their respective jurisdictions, shall, in like manner, be conservators of the peace.

§17. Vacancies in the office of any of the judges or chancellors of this State shall be filled by appointment by the governor; and such appointee shall hold his office for the unexpired term, and until his successor is elected or appointed and qualified.

Winter v. Sayre (MS.)

§18. If in any case, civil or criminal, pending in any circuit, chancery, or city court in this State, the presiding judge or chancellor shall, for any legal cause, be incompetent to try, hear, or render judgment in such cause, the parties or their attorneys of record, if it be a civil case, or the solicitor or other prosecuting officer, and the defendant or defendants, if it be a criminal case, may agree upon some disinterested person practicing in the court and learned in the law, to act as special judge or chancellor, to sit as a court, and to hear, decide, and render judgment in the same manner and to the same effect as a judge of the circuit or city court, or chancellor sitting as a court might do in such case. If the case be a civil one, and the parties or their attorneys of record do not agree, or if the case be a criminal one, and the prosecuting officer and the defendant or defendants do not agree upon a special judge or chancellor, or if either party in a civil cause is not represented in court, the clerk of the circuit or city court, or register in chan-

cery, of the court in which said cause is pending, shall appoint the special judge or chancellor, who shall preside, try, and render judgment as in this section provided.

If a disqualified judge arranges for another judge to hold the term, he may try and determine the issues arising in the case in which the regular judge is disqualified.—Payne v. State, 60 Ala. 80. **Relationship within the fourth degree of consanguinity or affinity disqualifies.**—Gill v. State, 61 Ala. 169. **Statutory provisions are not exclusive of disqualifications imposed by the common law.**—Medlin v. Taylor, 101 Ala. 239; Pegues v. Baker, 110 Ala. 251.

§19. The general assembly shall have power to provide for the holding of circuit and chancery courts in this State, when the judges or chancellors thereof fail to attend regular terms.

§20. No judge of any court of record in this State shall practice law in any of the courts of this State or of the United States.

§21. Registers in chancery shall be appointed by the chancellors of the divisions, and shall hold office during the term of the chancellor making such appointment; and such registers shall receive as compensation for their services only such fees and commissions as may be specifically prescribed by law.

§22. A clerk of the supreme court shall be appointed by the judges thereof, and shall hold office during the term of the judges making the appointment; and clerks of such inferior courts as may be established by law shall be appointed by the judges thereof, and shall hold office during the term of the judge making such appointment.

§23. Clerks of the circuit court shall be elected by the qualified electors in each county for the term of six years. Vacancies in such office shall be filled by the governor for the unexpired term.

§24. The clerk of the supreme court and registers in chancery may be removed from office by the judges of the supreme court and chancellors respectively, for cause, to be entered at length upon the records of the court.

§25. A solicitor for each judicial circuit shall be elected by joint ballot of the general assembly, who shall be learned in the law, and who shall, at the time of his election, and during his continuance in office, reside in the circuit for which he is chosen, and whose term of office shall be for six years; *Provided*, that the general assembly, at the first session thereof after the ratification of this Constitution, shall, by joint ballot, elect a solicitor for each judicial circuit of the State, whose term of office shall begin on Tuesday after the first Monday in November, eighteen hundred and seventy-six, and continue for four years; *And provided*, that the general assembly may, when necessary, provide for the election or appointment of county solicitors.

Mandatory as to circuit solicitors; permissive as to county.—Ex parte Lusk, 82 Ala. 519.

§26. There shall be elected by the qualified electors of each precinct of the counties not exceeding two justices of the peace and one constable. Such justices shall have jurisdiction in all civil cases wherein the amount in controversy does not exceed one hundred dollars, except in cases of libel, slander, assault and battery, and ejectment. In all cases tried before such justices the right of appeal, without prepayment of costs, shall be secured by law; *Provided*, that the governor may appoint one notary public for each election precinct in counties, and one for each ward in cities of over five thousand inhabitants, who, in addition to the powers of notary, shall have

and exercise the same jurisdiction as justices of the peace within the precincts and wards for which they are respectively appointed; *And provided*, that notaries public without such jurisdiction may be appointed. The term of office of such justices and notaries public shall be prescribed by law.

Not self-executing.—Pearce v. Pope, 42 Ala. 319; Taylor v. Woods, 52 Ala. 474; Carter v. Alford, 64 Ala. 236; K. C. M. & B. R. Co. v. Whitehead, 109 Ala. 495. **Jurisdiction generally.** Jurisdiction, **in case of moneyed demand,** is determined by the amount legally due or actually claimed, not by recovery.—Cothran v. Weir, 3 Ala. 24; Crabtree v. Cliatt, 22 Ala. 181; Carter v. Alford, 64 Ala. 236. **Concurrent with circuit court where amount involved is between fifty and one hundred dollars.**—Carew v. Lillienthall, 50 Ala. 44. **If debt above jurisdiction is divided** and notes given each within the amount, suit may be brought on each note before justice of the peace. Herrin v. Buckalew, 37 Ala. 585. **Plaintiff in an action on a contract may remit the excess** so as to bring the debt within jurisdiction, against defendant's objection.—King v. Dougherty, 2 S. 487; Nibbs v. Moody, 5. S. & P. 198; Bentley v. Wright, 3 Ala. 607; Henderson v. Plumb, 18 Ala. 74; Crabtree v. Cliatt, 22 Ala. 181; Solomon v. Ross, 49 Ala. 198; Carter v. Alford, 64 Ala. 236; Davis v. Bedsole, 69 Ala. 362; Wharton v. King, 69 Ala. 365. **Entry and detainer.** Has jurisdiction of forcible entry and detainer. Ward v. Lewis, 1 Stew. 26. Legislature cannot give the right to try title to real estate by calling it unlawful detainer.—Ex parte Webb, 58 Ala. 109; Webb v. Carlisle, 65 Ala. 313. Right of appeal must be secured.—Tims v. State, 26 Ala. 165; Ex parte Houghton, 38 Ala. 570. **Notary, with jurisdiction of justice of the peace:** May exercise both the civil and criminal jurisdiction of a justice.—Carroll v. State, 58 Ala. 396. Has power to issue attachments returnable before himself in causes of which he has jurisdiction. Griffin v. Appleby, 69 Ala. 409; Rice v. Watts, 71 Ala. 593. But not, before statute, returnable before circuit or city court.—Vann v. Adams, 71 Ala. 475; Nordlinger v. Gordon, 72 Ala. 239; Jackson v. Bain, 74 Ala. 328. Not necessary, but proper, to add "Ex officio justice of the peace" to his signature.—Coleman v. State, 63 Ala. 93.

§27. An attorney-general shall be elected by the qualified electors of the State at the same time and places of election of members of the general assembly, whose term of office shall be for two years, and until his successor is elected and qualified. After his election he shall reside at the seat of government, and shall be the law officer of the State, and shall perform such duties as may be required of him by law.

§28. The style of all process shall be "The State of Alabama," and all prosecutions shall be carried on in the name and by the authority of the same, and shall conclude, "Against the peace and dignity of the State."

Criminal prosecutions triable without indictment by a grand jury need not conclude "against the peace," etc.—Thomas v. State, 107 Ala. 61; Simpson v. State, 111 Ala. 6. **Information in impeachment should so conclude.**—Thomas v. State, 107 Ala. 61, 64.

ARTICLE VII.

IMPEACHMENTS.

§1. The governor, secretary of state, auditor, treasurer, attorney-general, superintendent of education and judges of the supreme court may be removed from office for willful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith, by the senate, sitting as a court for that purpose, under oath or affirmation, on articles or charges preferred by the house of representatives.

§2. The chancellors, judges of the circuit courts, judges of the probate courts, solicitors of the circuits, and judges of inferior courts from which an appeal may be taken directly to the supreme court, may be removed from office for any of the causes specified in the preceding section, by the supreme court, under such regulations as may be prescribed by law.

State v. Buckley, 54 Ala. 599; State v. Savage, 89 Ala. 1; State v. Tally, 102 Ala. 25; State v. Robinson, 111 Ala. 482.

§3. The sheriffs, clerks of the circuit, city, or criminal courts, tax-collectors, tax-assessors, county treasurers, coroners, justices of the peace, notaries public, constables, and all other county officers, mayors, and intendants of incorporated cities and towns in this State, may be removed from office for any of the causes specified in section one of this article, by the circuit, city, or criminal court of the county in which such officers hold their office, under such regulations as may be prescribed by law. *Provided*, that the right of trial by jury and appeal in such cases be secured.

State v. Seawell, 64 Ala. 225; Ex parte Wiley, 54 Ala. 226.

§4. The penalties in cases arising under the three preceding sections shall not extend beyond removal from office, and disqualification from holding office under the authority of this State, for the term for which he was elected or appointed; but the accused shall be liable to indictment, trial, and punishment, as prescribed by law.

ARTICLE VIII.

SUFFRAGE AND ELECTIONS.

§1. Every male citizen of the United States, and every male person of foreign birth, who may have legally declared his intention to become a citizen of the United States before he offers to vote, who is twenty-one years old or upwards, possessing the following qualifications, shall be an elector, and shall be entitled to vote at any election by the people, except as hereinafter provided:

First.—He shall have resided in the State at least one year immediately preceding the election at which he offers to vote.

Second.—He shall have resided in the county for three months, and in the precinct or ward for thirty days immediately preceding the election at which he offers to vote; *Provided*, that the general assembly may prescribe a longer or shorter residence in any precinct in any county or in any ward in any incorporated city or town having a population of more than five thousand inhabitants, but in no case to exceed three months; *And provided*, that no soldier, sailor or marine in the military or naval service of the United States, shall acquire a residence by being stationed in this State.

§2. All elections by the people shall be by ballot, and all elections by persons in a representative capacity shall be viva voce.

§3. The following classes shall not be permitted to register, vote or hold office:

First.—Those who shall have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or other crime punishable by imprisonment in the penitentiary.

Does not impinge the Federal Constitution; nature of the elective franchise; forfeited by the commission of any of the crimes here mentioned, or any grade of them.—Washington v. State, 75 Ala. 582; Anderson v. State, 72 Ala. 187; Gandy v. State, 82 Ala. 61, 86 Ala. 20.

Second.—Those who are idiots or insane.

§4. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, or while going to or returning therefrom.

§5. The general assembly shall pass laws, not inconsistent with this Constitution, to regulate and govern elections in this State, and all such laws shall be uniform throughout the State. The general assembly may, when necessary, provide by law for the registration of electors throughout the State, or in any incorporated city or town thereof, and when it is so provided, no person shall vote at any election unless he shall have registered as required by law.

§6. It shall be the duty of the general assembly to pass adequate laws giving protection against the evils arising from the use of intoxicating liquors at all elections.

§7. Returns of elections for all civil officers who are to be commissioned by the governor, except secretary of state, state auditor, state treasurer and attorney-general, and for members of the general assembly, shall be made to the secretary of state.

ARTICLE IX.

REPRESENTATION.

§1. The whole number of senators shall be not less than one-fourth or more than one-third the whole number of representatives.

§2. The house of representatives shall consist of not more than one hundred members, who shall be apportioned by the general assembly among the several counties of the State, according to the number of inhabitants in them respectively, as ascertained by the decennial census of the United States for the year eighteen hundred and eighty; which apportionment, when made, shall not be subject to alteration until the first session of the general assembly after the next decennial census of the United States shall have been taken.

§3. It shall be the duty of the general assembly, at its first session after the taking of the decennial census of the United States in the year eighteen hundred and eighty, and after each subsequent decennial census, to fix by law the number of representatives, and apportion them among the several counties of the State; *Provided*, that each county shall be entitled to at least one representative.

§4. It shall be the duty of the general assembly at its first session after the taking of the decennial census of the United States in the year eighteen hundred and eighty, and after each subsequent decennial census, to fix by law the number of senators, and to divide the State into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more; and which districts, when formed, shall not be changed until the next apportioning session of the general assembly after the next decennial census of the United States shall have been taken. No county shall be divided between two districts, and no district shall be made of two or more counties not contiguous to each other.

§5. Should the decennial census of the United States, from any cause, not be taken, or if, when taken, the same as to this State is not full and satisfactory, the general assembly shall have power, at its first session after the time shall have elapsed for the taking of said census, to provide for an enumeration of all the inhabitants of this State, and once in each ten years

thereafter, upon which it shall be the duty of the general assembly to make the apportionment of representatives and senators as provided for in this article.

§6. Until the general assembly shall make an apportionment of representatives among the several counties, after the first decennial census of the United States, as herein provided, the counties of Autauga, Baldwin, Bibb, Blount, Calhoun, Chilton, Cherokee, Choctaw, Clark, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Dale, DeKalb, Elmore, Etowah, Escambia, Fayette, Franklin, Geneva, Henry, Lauderdale, Marion, Morgan, Monroe, Marshall, Randolph, Sanford, Shelby, St. Clair, Walker, Washington, and Winston shall each have one representative; the counties of Barbour, Bullock, Butler, Chambers, Greene, Hale, Jackson, Jefferson, Limestone, Lawrence, Lowndes, Lee, Macon, Marengo, Perry, Pickens, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa, and Wilcox shall have each two representatives; the county of Madison shall have three representatives; the counties of Dallas and Montgomery shall have each four representatives; and the county of Mobile shall have five representatives.

§7. Until the general assembly shall divide the State into senatorial districts, as herein provided, the senatorial districts shall be as follows:

First district, Lauderdale and Limestone; second district, Colbert and Lawrence; third district, Morgan, Winston, and Blount; fourth district, Madison; fifth district, Marshall, Jackson, and DeKalb; sixth district, Cherokee, Etowah, and St. Clair; seventh district, Calhoun and Cleburne; eighth district, Talladega and Clay; ninth district, Randolph and Chambers; tenth district, Macon and Tallapoosa; eleventh district, Bibb and Tuscaloosa; twelfth district, Franklin, Marion, Fayette, and Sanford; thirteenth district, Walker, Jefferson, and Shelby; fourteenth district, Greene and Pickens; fifteenth district, Coosa, Elmore, and Chilton; sixteenth district, Lowndes and Autauga; seventeenth district, Butler and Conecuh; eighteenth district, Perry; nineteenth district, Choctaw, Clark, and Washington; twentieth district, Marengo; twenty-first district, Monroe, Escambia, and Baldwin; twenty-second district, Wilcox; twenty-third district, Henry, Coffee, Dale, and Geneva; twenty-fourth district, Barbour; twenty-fifth district, Pike, Crenshaw, and Covington; twenty-sixth district, Bullock; twenty-seventh district, Lee; twenty-eighth district, Montgomery; twenty-ninth district, Russell; thirtieth district, Dallas; thirty-first district, Sumter; thirty-second district, Hale; thirty-third district, Mobile.

ARTICLE X.

EXEMPTED PROPERTY.

§1. The personal property of any resident of this State, to the value of one thousand dollars, to be selected by such resident, shall be exempted from sale on execution, or other process of any court, issued for the collection of any debt contracted since the thirteenth day of July, eighteen hundred and sixty-eight, or after the ratification of this Constitution.

Must be liberally construed.—Webb v. Edwards, 46 Ala. 17; Fearn v. Ward, 65 Ala. 33. **The right of selection belongs to the debtor,** and is beyond the reach of legislative or judicial restraint before sale.—Bray v. Laird, 44 Ala. 295; Brewer v. Granger, 45 Ala. 580; Webb v. Edwards, 46 Ala. 17; Ala. Conference v. Vaughan, 54 Ala. 443; Williamson v. Harris, 57 Ala. 40; Enzor v. Hurt, 76 Ala. 595. **A mere personal privilege to be ex-**

ercised or not at the option of the debtor.—Graham v. Walker, 10 Ala. 370; Ross v. Hannah, 18 Ala. 125; Bell v. Davis, 42 Ala. 460; Brown v. Lietch, 60 Ala. 313; Sherry v. Brown, 66 Ala. 51; Randolph v. Little, 62 Ala. 396; Patillo v. Taylor, 83 Ala. 230; Stanley v. Ehrman, 83 Ala. 215; Motley v. Jones, 98 Ala. 443; Kennedy v. Bank, 107 Ala. 170. **The claim must show that the debt was contracted since the ordination and enactment of the exemption laws.**—Randolph v. Little, 62 Ala. 396; Young v. Hubbard, 102 Ala. 373; Ely v. Blacker, 112 Ala. 311. **As between debtor and creditor the right depends on the law existing at the creation of the debt.**—Ala. Conference v. Vaughan, 54 Ala. 443; Wilson v. Brown, 58 Ala. 62; Nelson v. McCrary, 60 Ala. 301; Blum v. Carter, 63 Ala. 235; Fearn v. Ward, 65 Ala. 33; Giddens v. Williamson, 65 Ala. 439; Carlisle v. Godwin, 68 Ala. 137; Keel v. Larkin, 72 Ala. 493; Cochran v. Miller, 74 Ala. 50; Park v. Spencer, 75 Ala. 49. **"Personal property" is used in its largest sense, and includes choses in action, money or any other personal property.**—Webb v. Edwards, 46 Ala. 17; Dane v. Loomis, 51 Ala. 487; Williamson v. Harris, 57 Ala. 40; Alley v. Daniel, 75 Ala. 403; Enzor v. Hurt, 76 Ala. 595; Kennedy v. Smith, 99 Ala. 83. **Residence within the State essential.**—Auerbach v. Pritchett, 58 Ala. 451; Talmadge v. Talmadge, 66 Ala. 199; McCrary v. Chase, 71 Ala. 540. **A resident need not have a family to be entitled.**—Webb v. Edwards, 46 Ala. 17. **May be claimed by a married woman.**—Bender v. Meyer, 55 Ala. 576; Scheussler v. Wilson, 56 Ala. 516. **Doubtful whether an absconding debtor entitled.**—McBrayer v. Dillard, 49 Ala. 174. **Neither a partnership, nor the partners during the continuance of the relation, can claim** individual exemption in partnership property levied on for partnership debt.—Giovanni v. First Nat'l Bank, 55 Ala. 305 (overruling Howard v. Jones, 50 Ala. 67; Dunklin v. Kimball, 50 Ala. 251; Giovanni v. First Nat'l Bank, 51 Ala. 177); Terrell v. Hurst, 76 Ala. 588; Levy v. Williams, 79 Ala. 171; Schlapback v. Long, 90 Ala. 525; Aiken v. Steiner, 98 Ala. 355. **Costs in a civil suit is a debt** against which exemption may be claimed.—Clingman v. Kemp, 57 Ala. 195. **May not be claimed against judgment for a penalty** imposed by statute.—Williams v. Bowden, 69 Ala. 433. **Nor against lien on personal property created by contract to secure a debt.**—Brown v. Coats, 56 Ala. 439. **Nor against statutory lien for rent.**—Ex parte Barnes, 84 Ala. 540. **Nor against claim by State for defalcation.**—Vincent v. State, 74 Ala. 274. **Nor against judgment for tort.**—Meredith v. Holmes, 68 Ala. 190; Vincent v. State, 74 Ala. 274; Wright v. Jones, 103 Ala. 539. **Nor by executor against liability for a devastavit.**—Dangaix v. Lunsford, 112 Ala. 403. **Nor against judgment for damages in detinue.**—Stuckey v. McKibbon, 92 Ala. 622 (limiting Clingman v. Kemp, 57 Ala. 195). **Double exemption not allowed;** when may be claimed a second time.—Weis v. Levy, 69 Ala. 209. **When money in the hands of a garnishee is claimed the claim must be filed before judgment of condemnation.**—Randolph v. Little, 62 Ala. 396 (overruling Webb v. Edwards, 46 Ala. 17); Roden v. Brown, 103 Ala. 324.

§2. Every homestead, not exceeding eighty acres, and the dwelling and appurtenances thereon, to be selected by the owner thereof, and not in any city, town, or village, or in lieu thereof, at the option of the owner, any lot in the city, town, or village, with the dwelling and appurtenances thereon, owned and occupied by any resident of this State, and not exceeding the value of two thousand dollars, shall be exempted from sale on execution, or any other process from a court, for any debt contracted since the thirteenth day of July, eighteen hundred and sixty-eight, or after the ratification of this Constitution. Such exemption, however, shall not extend to any mortgage lawfully obtained, but such mortgage or other alienation of such homestead, by the owner thereof, if a married man, shall not be valid without the voluntary signature and assent of the wife to the same.

Legislature may increase constitutional exemptions but may not diminish them; self-executing.—Miller v. Marx, 55 Ala. 322; David v. David, 56 Ala. 49. **Must be liberally construed in favor of the exemption.**—McGuire v. Van Pelt, 55 Ala. 344; Webber v. Short, 55 Ala. 311; Kennedy v. First Nat. Bank, 107 Ala. 170. **Limited to debts contracted after the adoption of the Constitution.**—Miller v. Marx, 55 Ala. 322; Preiss v. Campbell, 59 Ala. 635. **Essentials to, and extent of homestead;** protection is only extended to residents; and only covers land owned, used and actually occupied, as a home, dwelling-place, family seat, mansion.—Koster v. McWilliams, 41 Ala. 302; McGuire v. Van Pelt, 55 Ala. 344; McConnaughy v. Baxter, 55 Ala. 379; Chambers v. McPhaul, 55 Ala. 367; David v. David, 56 Ala. 49; Dexter v. Strobach, 56 Ala. 233; Lyons v. Connor, 57 Ala. 181; Daniel v. Collins, 57 Ala. 625; Boyle v. Shulman, 59 Ala. 566; Preiss v. Campbell, 59 Ala. 635; Stow v. Lillie, 63 Ala. 257; Blum v. Carter, 63 Ala. 235; Martin v. Lile, 63 Ala. 406; Watts v. Gordon, 65 Ala. 546; Lehman v. Bryan, 67 Ala. 558; Talmadge v. Talmadge, 66 Ala. 199; Hudson v. Kelley, 70 Ala. 393; Lyne v. Wann, 72 Ala. 43; Scaife v. Argall, 74 Ala. 473; Murphy v. Hunt, 75 Ala. 438; Ex parte Pearson, 76 Ala. 521; Beard v. Johnson, 87 Ala. 729; Jaffrey v. McGough, 88 Ala. 648; Garrett v. Jones, 95 Ala. 96;

Winston v. Hodges, 102 Ala. 304; Turner v. Turner, 107 Ala. 465. **Abandonment;** temporarily leaving homestead.—McConnaughy v. Baxter, 55 Ala. 379 (overruling Milton v. Andrews, 45 Ala. 454); Boyle v. Shulman, 59 Ala. 566; Stow v. Lillie, 63 Ala. 257; Scaife v. Argall, 74 Ala. 473; Hines v. Duncan, 79 Ala. 112; Caldwell v. Pollak, 91 Ala. 353; s. c., 94 Ala. 149; Sides v. Scharff, 93 Ala. 106; Garrett v. Jones, 95 Ala. 96; Fuller v. Whitlock, 99 Ala. 411; Metcalf v. Smith, 106 Ala. 301; Herzfeld v. Beasley, 106 Ala. 447; Blackman v. Moore-Handley Hdw. Co., 106 Ala. 458; Turner v. Turner, 107 Ala. 465. **The quantum or quality of the estate or interest** is unimportant, if required conditions prevail; exemption may be claimed in leased premises.—McGuire v. Van Pelt, 55 Ala. 344 (doubting Pizzala v. Campbell, 46 Ala. 35); Webber v. Short, 55 Ala. 311; Chambers v. McPhaul, 55 Ala. 367; Watts v. Gordon, 65 Ala. 546; Tyler v. Jewett, 82 Ala. 93; Winston v. Hodges, 102 Ala. 304. **But it is governed and controlled by the law in force at the creation** of the debt.—Miller v. Marx, 55 Ala. 322; Watts v. Barnett, 56 Ala. 340; Wilson v. Brown, 58 Ala. 62; Horn v. Wiatt, 60 Ala. 297; Nelson v. McCrary, 60 Ala. 301; Johnson v. Murphy, 60 Ala. 288; Garner v. Bond, 61 Ala. 84; Hardy v. Sulzbacher, 62 Ala. 44; Blum v. Carter, 63 Ala. 235; Smith v. Cockrell, 66 Ala. 64; Carr v. Shackelford, 68 Ala. 241; Slaughter v. McBride, 69 Ala. 510; Peevey v. Cabaniss, 70 Ala. 253; Cochran v. Miller, 74 Ala. 50; DeGraffenreid v. Clark, 75 Ala. 425; Clark v. Spencer, 75 Ala. 49; Paull v. McLeod, 76 Ala. 418. **Selection; when necessary; homestead in several detached parcels of land.**—Andrews v. Milton, 51 Ala. 400; Hardy v. Sulzbacher, 62 Ala. 44; DeGraffenreid v. Clark, 75 Ala. 425; Dicus v. Hall, 83 Ala. 159; Beard v. Robinson, 87 Ala. 729; Jaffrey v. McGough, 88 Ala. 648; Alford v. Alford, 88 Ala. 656; Pollock v. McNeil, 100 Ala. 203; Shubert v. Winston, 95 Ala. 159; Hodge v. Winston, 95 Ala. 514; s. c., 102 Ala. 304; Kennedy v. Bank, 107 Ala. 170; Turner v. Turner, 107 Ala. 465. **It is legally impossible for two homesteads of the same person to coexist.** Boyle v. Shulman, 59 Ala. 569; Woodstock I. Co. v. Richardson, 94 Ala. 629. **The limitation of two thousand dollars extends to the country.**—Miller v. Marx, 55 Ala. 322. If proper conditions concur, **a married woman may claim homestead in her separate estate.**—Bender v. Meyer, 55 Ala. 576; Weiner v. Sterling, 61 Ala. 98; Beard v. Johnson, 87 Ala. 729. **Fraudulent grantor may claim in land the deed to which has been annulled at the suit of creditors.**—Fellows v. Lewis, 65 Ala. 343; Smith v. Cockrell, 66 Ala. 64; Kennedy v. Bank, 107 Ala. 170. **And so, in land, pending a direct proceeding to condemn it.**—Randolph v. Little, 62 Ala. 396; Sherry v. Brown, 66 Ala. 51; Stanley v. Ehrman, 83 Ala. 215; Kennedy v. Bank, 107 Ala. 170. **Cannot be so asserted as to affect valid liens.**—Blum v. Carter, 63 Ala. 235; Newbold v. Smart, 67 Ala. 326; Ross v. Perry, 105 Ala. 533. **Meaning of "debts contracted"; cannot be claimed when judgment is in tort.**—Meredith v. Holmes, 68 Ala. 190; Williams v. Bowden, 69 Ala. 433; Vincent v. State, 74 Ala. 274; Wright v. Jones, 103 Ala. 539. **Law conferring exemption must be of force when it is claimed.**—Nelson v. McCrary, 60 Ala. 301; Lovelace v. Webb, 62 Ala. 271; Clark v. Snodgrass, 66 Ala. 233. **Alienation:** Since the Constitution of 1868 a mortgage, or other conveyance of the homestead, without the voluntary signature and assent of the wife, is inoperative.—Miller v. Marx, 55 Ala. 322; Peters v. McKinney, 56 Ala. 41; McGuire v. Van Pelt, 55 Ala. 344; Balkum v. Wood, 58 Ala. 642; Halso v. Seawright, 65 Ala. 431; Seaman v. Nolen, 68 Ala. 463; Slaughter v. McBride, 69 Ala. 510; DeGraffenreid v. Clark, 75 Ala. 425; Alford v. Lehman, 76 Ala. 526; Watson v. Mansill, 76 Ala. 600; Crim v. Nelms, 78 Ala. 604; Strauss v. Harrison, 79 Ala. 324; Moses v. McLain, 82 Ala. 370; Smith v. Pearce, 85 Ala. 264; Cox v. Holcomb, 87 Ala. 589; Griffith v. Ventress, 91 Ala. 366; Hodges v. Winston, 95 Ala. 514; Woodstock I. Co. v. Richardson, 94 Ala. 629; Parks v. Barnett, 104 Ala. 438. Though the wife be insane.—Thompson v. N. E. Mfg. Sec. Co., 110 Ala. 400. Prior to 1873, if the wife join in the execution of a conveyance, and it was regularly executed as other conveyances, the homestead passed.—Miller v. Marx, 55 Ala. 322; Lyons v. Connor, 57 Ala. 181; Preiss v. Campbell, 59 Ala. 635; Cahall v. Cit. Mut. Bldg. Assn., 61 Ala. 232; Forsyth v. Preer, 62 Ala. 443; Rogers v. Adams, 66 Ala. 600; Scott v. Simons, 70 Ala. 352; Butts v. Broughton, 72 Ala. 294; Jones v. Roper, 86 Ala. 210. Since 1873 the form then prescribed must be regarded as a negation on all other methods of alienation and must be followed.—Scott v. Simons, 70 Ala. 352. But the requirement applies only to conveyances perfected by delivery.—Jenkins v. Harrison, 66 Ala. 345. Separate examination of wife not essential to convey her separate estate.—Weiner v. Sterling, 61 Ala. 98; Dawson v. Burruss, 73 Ala. 111. Voluntary signature and assent is all that is required; wife need not be named as grantor if she joins in power of sale in a mortgage.—Dooley v. Villalonga, 61 Ala. 129; Hood v. Powell, 73 Ala. 171; Shelton v. Aultman, 82 Ala. 315. A deed or mortgage, inoperative to pass the homestead, if regularly executed passes any excess above homestead that may be described.—Miller v. Marx, 55 Ala. 322; McGuire v. Van Pelt, 55 Ala. 344; Pettus v. McKinney, 56 Ala. 41; Barner v. Bond, 61 Ala. 84; Snedecor v. Freeman, 71 Ala. 140; DeGraffenreid v. Clark, 75 Ala. 425. But if wife joins "solely for the purpose of releasing dower" the homestead will not pass although the acknowledgment is sufficient.—Thompson v. Sheppard, 85 Ala. 611. Sufficiency of certificate showing "voluntary signature and assent."—Scott v. Simmons, 70 Ala. 352; Motes v. Carter, 73 Ala. 553. **Acknowledgment may be after execution, but not so as to affect intervening rights.**—Cahall v. Cit. Mut. Bldg. Assn., 61 Ala. 232; Hood v. Powell, 73 Ala. 171; Winston v. Hodges, 102 Ala. 304. **But not after the death of the husband.**—Richardson v. Woodstock I. Co., 90 Ala. 266; s. c., 94 Ala. 629; Hodges v. Winston, 95 Ala. 514; Parks v. Barnett, 104 Ala. 438. **Nor after sale**

under execution.—Smith v. Pearce, 85 Ala. 264. **Under Constitution of 1868,** if homestead was a lot in a town worth over two thousand dollars, and incapable of reduction, there was no exemption and no restraint on its alienation.—Miller v. Marx, 55 Ala. 322; Watts v. Barnett, 56 Ala. 340; Garner v. Bond, 61 Ala. 84. **A conveyance of the homestead by the husband, direct to the wife, is not void, but passes the legal title, subject to all pre-existing homestead rights.**—Turner v. Bernheimer, 95 Ala. 241. **Conveyance of right of way over homestead invalid** unless wife joins.—McGhee v. Wilson, 111 Ala. 615.

§3. The homestead of the family, after the death of the owner thereof, shall be exempt from the payment of any debts contracted since the thirteenth day of July, one thousand eight hundred and sixty-eight, or after the ratification of this Constitution, in all cases, during the minority of the children.

It is the actual homestead at the time of the death which is exempt; other land cannot be selected.—Chambers v. McPhaul, 55 Ala. 367; David v. David, 56 Ala. 49; Turner v. Turner, 107 Ala. 465. May be claimed **in property purchased with declared intention of using it as a homestead,** but the use of which was prevented by death. Englehardt v. Yung, 76 Ala. 534. **For the benefit of actual residence;** widow must be resident at the time of husband's death.—Allen v. Manasses, 4 Ala. 554; Ex parte Pearson, 76 Ala. 521. **Exemption free from administration;** vests at death of owner; continues during life of widow and minority of children and then reverts.—Webber v. Short, 55 Ala. 311; Miller v. Marx, 55 Ala. 322; Hunter v. Law, 68 Ala. 365; Barber v. Williams, 74 Ala. 331; Norton v. Norton, 94 Ala. 481; Cofer v. Scroggins, 98 Ala. 342. **Equitable title sufficient.**—Munchus v. Harris, 69 Ala. 506. **Cannot be cut off by attempted disposition by will.**—Bell v. Bell, 84 Ala. 64. **Adopted child entitled to exemption.**—Cofer v. Scroggins, 98 Ala. 342. **The fact that a widow has a separate estate does not lessen her right.**—Darden v. Reese, 62 Ala. 311. **Exemption takes effect at the death of owner of homestead and is controlled by the then law; the quantity** is controlled by the law of force at the creation of the debt.—Taylor v. Pettus, 52 Ala. 287; Taylor v. Taylor, 53 Ala. 135; Rottenberry v. Pipes, 53 Ala. 447; Miller v. Marx, 55 Ala. 322; Davis v. Davis, 63 Ala. 293; Slaughter v. McBride, 69 Ala. 510; Skinner v. Chapman, 78 Ala. 376; McDonald v. Berry, 90 Ala. 464.

§4. The provisions of sections one and two of this article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming such exemption, or a mechanic's lien for work done on the premises.

§5. If the owner of a homestead die, leaving a widow, but no children, such homestead shall be exempt, and the rents and profits thereof shall enure to her benefit.

Gives a mere right to occupy, without power to convey or charge; at death of widow reverts to estate of owner.—Miller v. Marx, 55 Ala. 322; Barber v. Williams, 74 Ala. 331. **Attempted alienation as an abandonment.**—Barber v. Williams, 74 Ala. 331. **Exemption is in the actual homestead;** if that is leased merely, or mortgaged, other property cannot be selected.—Chambers v. McPhaul, 55 Ala. 367. See also Citations to Art. X., Sec. 3.

§6. The real and personal property of any female in this State, acquired before marriage, and all property, real and personal, to which she may afterwards be entitled by gift, grant, inheritance, or devise, shall be and remain the separate estate and property of such female, and shall not be liable for any debts, obligations and engagements of her husband, and may be devised or bequeathed by her, the same as if she were a *femme sole*.

Abrogates the right of married woman to disaffirm at any time a purchase of property made by her.—McAnally v. Heflin, 105 Ala. 525. **If not induced by improper influence, an absolute conveyance of the wife's land in payment of her husband's debt is valid.**—Perryman v. Greer, 39 Ala. 133; Holt v. Agnew, 67 Ala. 360; Hubbard v. Sayre, 105 Ala. 440; Giddens v. Powell, 108 Ala. 621. **Married woman may enter into business partnership with her husband.**—Leinkauff v. Frenkle, 80 Ala. 136; LeGrand v. Eufaula Nat. Bank, 81 Ala. 123; Rabbitte v. Orr, 83 Ala. 185; Schlapback v. Long, 90 Ala. 525; Belser v. Tuscumbia Banking Co., 105 Ala. 514. **But may not become surety for her husband;** mortgage of wife's land to secure husband's debt not binding.—Steed v. Knowles, 79 Ala. 446; Heard v. Hicks, 82 Ala. 484; Union Nat. Bank v. Hartwell, 84 Ala. 379; Landsden v. Bone, 90 Ala. 446; Vincent v. Walker, 93 Ala. 165; Schening v.

Cofer, 97 Ala. 726; McNeil v. Davis, 105 Ala. 657. **The husband is still the head of the household as at common law.**—Strouse v. Leipf, 101 Ala. 433.

§7. The right of exemptions hereinbefore secured may be waived by an instrument in writing, and when such waiver relates to realty, the instrument must be signed by both the husband and the wife, and attested by one witness.

Exemption of personal property could be waived by stipulation in a note prior to Constitution.—Brown v. Leitch, 60 Ala. 313. **Waiver must be in writing and the intention clear.**—Knox v. Wilson, 77 Ala. 309. **Waiver of exemptions as to personalty may be expressed in any written contract;** if of the homestead it must be by separate instrument.—Neely v. Henry, 63 Ala. 261; Terrell v. Hurst, 76 Ala. 588; Wagnon v. Keenan, 77 Ala. 519; Agnew v. Walden, 95 Ala. 108; Reed Lumber Co. v. Lewis, 94 Ala. 626. **If waiver only as to part of exempt property such part must be specified; not so if general.**—Neely v. Henry, 63 Ala. 261. **Waiver in partnership note operates to waive the individual exemptions in personalty of the partner executing the note;** but not of the other partner unless signer was specially authorized.—Terrell v. Hurst, 76 Ala. 588; Reed Lumber Co. v. Lewis, 94 Ala. 626. **Law prohibiting garnishments except where exemptions are waived and the debt was contracted for necessaries not a restraint on the right to waive.**—Adams v. Creen, 100 Ala. 218. **A note waiving exemptions is a mere engagement and does not create a lien on property.**—Craft v. Stoutz, 95 Ala. 245. **And is ineffectual as against the widow and minor children of the deceased maker.**—Wiggins v. Mertins, 111 Ala. 164.

ARTICLE XI.

TAXATION.

§1. All taxes levied on property in this State shall be assessed in exact proportion to the value of such property; *Provided, however*, the general assembly may levy a poll-tax, not to exceed one dollar and fifty cents on each poll, which shall be applied exclusively in aid of the public school fund in the county so paying the same.

"Taxes" and "taxation" have respectively the same meaning in this article.—Mayor v. Klein, 89 Ala. 461. **The right to tax is a limitation, not a grant of power.**—Dorman v. State, 34 Ala. 216; Irwin v. Mobile, 57 Ala. 6; Shultes v. Eberly, 82 Ala. 242; Hare v. Kennerly, 83 Ala. 608; Mayor v. Klein, 89 Ala. 461; Elyton Land Co. v. Mayor, 89 Ala. 477. Article **intended to provide for, regulate and limit only general taxation for general government purposes,** State, county and municipal.—Mayor v. Klein, 89 Ala. 461. **All taxation must be in exact proportion to value,** but approximate equality is sufficient.—Mayor v. Stonewall Ins. Co., 53 Ala. 570; Board v. A. C. R. Co., 59 Ala. 551; Board of Rev. v. Mont. Gas L. Co., 64 Ala. 269; Moog v. Randolph, 77 Ala. 597; W. U. Tel. Co. v. State, Bd. Assmt., 80 Ala. 273; Elyton Land Co. v. Mayor, 89 Ala. 477; Mayor v. Klein, 89 Ala. 461; State Bank v. Board of Rev., 91 Ala. 217. **Not to be construed to prohibit exemptions from taxation;** nor a reasonable classification, nor to require the taxation of all property at precisely the same rate.—M. &. G. R. Co. v. Peebles, 47 Ala. 317; S. &. N. R. Co. v. Morris, 65 Ala. 193; Mayor v. Stonewall Ins. Co., 53 Ala. 570; Clark v. Mobile, 67 Ala. 217; Dauphin St. Ry. Co. v. Kennedy, 74 Ala. 583; Moog v. Randolph, 77 Ala. 597; W. U. Tel. Co. v. State Bd. Assmt., 80 Ala. 273; State Bank v. Bd. Rev., 91 Ala. 217. **Cannot prescribe or declare an arbitrary or artificial value under the guise of classification;** taxation must not be spoliation.—Assmt. Bd. v. A. C. R. Co., 59 Ala. 551; Moog v. Randolph, 77 Ala. 597. **Has no application to local assessments for local street improvement, as paving;** such power is referable to the general inherent power of taxation, not here limited or restrained.—Irwin v. Mobile, 57 Ala. 6; Mayor v. Klein, 89 Ala. 461 (overruling Mobile v. Dargan, 45 Ala. 310, and Mobile v. Royal St. Ry., 45 Ala. 322). **Incomes, salaries, etc.**—Lott v. Hubbard, 44 Ala. 593; Board of Rev. v. Montgomery Gas L. Co., 64 Ala. 269. **Does not forbid taxation of credits secured by mortgage on property which is also taxed.**—Ala. Gold Life Ins. Co. v. Lott, 54 Ala. 499.

§2. No power to levy taxes shall be delegated to individuals or private corporations.

Power can only be delegated to counties and municipal corporations.—President v. Board of Improvement, 45 Ala. 399; Clark v. Mobile, 67 Ala. 17; Schultes v. Eberly, 82 Ala. 242; Spigener v. Rives, 104 Ala. 437.

§3. After the ratification of this Constitution, no new debt shall be created against, or incurred by this State, or its authority, except to repel in-

vasion or suppress insurrection, and then only by a concurrence of two-thirds of the members of each house of the general assembly, and the vote shall be taken by yeas and nays and entered on the journals; and any act creating or incurring any new debt against this State, except as herein provided for, shall be absolutely void; *Provided*, the governor may be authorized to negotiate temporary loans, never to exceed one hundred thousand dollars, to meet deficiencies in the treasury; and until the same is paid, no new loan shall be negotiated; *Provided further*, that this section shall not be so construed as to prevent the issuance of bonds in adjustment of existing State indebtedness.

§4. The general assembly shall not have the power to levy, in any one year, a greater rate of taxation than three-fourths of one per centum on the value of the taxable property within this State.

Limitation applies only to State taxes levied for State purposes.—Hare v. Kennerly, 83 Ala. 608. **The term "taxable property," as here used, does not include all the subjects of taxation;** it shows that which is made, not which the legislature may make, liable.—Lott v. Rose, 38 Ala. 156; W. U. Tel. Co. v. State Bd. Assmt., 80 Ala. 273; Capital City Water Co. v. Bd. Rev., Ala. (MS.). **A distinction is made between the taxation of property, as such, and a license or privilege tax;** a business is not "taxable property" as here meant.—W. U. Tel. Co. v. State Bd. Assmt., 80 Ala. 273; Anniston v. So. Ry. Co., 112 Ala. 557; Capital City Water Co. v. Bd. Rev., Ala. (MS.). **Cannot levy for several years' past taxes,** to be paid at one time, exceeding the limit; this is not an assessment of escaped taxes.—Maguire v. Board of Rev., 71 Ala. 401.

§5. No county in this State shall be authorized to levy a larger rate of taxation, in any one year, on the value of the taxable property therein, than one-half of one per centum. *Provided*, that to pay debts existing at the ratification of this Constitution, an additional rate of one-fourth of one per centum may be levied and collected which shall be exclusively appropriated to the payment of such debts or the interest thereon. *Provided further*, that to pay any debt or liability now existing against any county, incurred for the erection of the necessary public buildings or other ordinary county purposes, or that may hereafter be created for the erection of necessary public buildings or bridges, any county may levy and collect such special taxes as may have been or may hereafter be authorized by law, which taxes so levied and collected shall be applied exclusively to the purposes for which the same were so levied and collected.

Limitation applies only to county taxes levied for county purposes.—Hare v. Kennerly, 83. Ala. 608. **A railroad bridge to be used and operated by a private corporation is not such a bridge as for the erection of which a special tax may be levied by a county.**—Garland v. Board of Rev., 87 Ala. 223. **Law authorizing a county to levy a special tax on a proposed "stock district," to be used in fencing it in is constitutional.**—Spigener v. Rives, 104 Ala. 437.

§6. The property of private corporations, associations and individuals of this State, shall forever be taxed at the same rate; *Provided*, this section shall not apply to institutions or enterprises devoted exclusively to religious, educational, or charitable purposes.

If a tax is imposed on a species of property all property of that species must be taxed at the same rate, whether belonging to an individual, association of persons or a private corporation.—Mayor v. Stonewall Ins. Co., 53 Ala. 570; Board of Assmt. v. A. C. R. Co., 59 Ala. 551; Nat. Com. Bank v. Mayor, 62 Ala. 284; Sumter Co. v. Nat. Bank, 62 Ala. 464; Board of Rev. v. Montgomery Gas L. Co., 64 Ala. 269; Auditor v. Jackson Co., 65 Ala. 142; Perry Co. v. R. Co., 65 Ala. 391; Pollard v. Zuber, 65 Ala. 628; State v. Rev. Board, 73 Ala. 65; Quartlebaum v. State, 79 Ala. 1; W. U. Tel. Co. v. State Bd. Assmt., 80 Ala. 273; State Bank v. Bd. Rev., 91 Ala. 217. **Should the legislature leave a species of property free from taxation by failure to provide machinery for assessment,** the courts are powerless.—Pollard v. Zuber, 65 Ala. 628; Auditor v. Jackson Co., 65 Ala. 142; State v. Bd. Rev., 73 Ala. 65; Maguire v. Board of Revenue, 71 Ala. 401. **Tax-**

payer may be authorized to deduct his indebtedness from his solvent credits.—Moog v. Randolph, 77 Ala. 597; State Bank v. Bd. Rev., 91 Ala. 217. **Law requiring auditor to assess and collect taxes on the road-bed and rolling-stock of railroad** and relieving these items from county taxation, was valid.—M. & G. R. Co. v. Peebles, 47 Ala. 317. **A specific commutation granted a corporation in lieu of an ad valorem tax is void.** Mayor v. Stonewall Ins. Co., 53 Ala. 570; Sumter Co. v. Nat. Bank, 62 Ala. 464. **The word "person" in the income tax of 1867 was construed to embrace corporations.** Bd. Rev. v. Montgomery Gas L. Co., 64 Ala. 269; State v. Rev. Bd., 73 Ala. 65.

§7. No city, town or other municipal corporation other than provided for in this article, shall levy or collect a larger rate of taxation, in any one year, on the property thereof, than one-half of one per centum of the value of such property, as assessed for State taxation during the preceding year; *Provided*, that for the payment of debts existing at the time of the ratification of this Constitution and the interest thereon, an additional rate of one per centum may be collected, to be applied exclusively to such indebtedness; *And provided*, this section shall not apply to the city of Mobile, which city may, until the first day of January, one thousand eight hundred and seventy-nine, levy a tax not to exceed the rate of one per centum, and from and after that time a tax not to exceed the rate of three-fourths of one per centum, to pay expenses of the city government, and may also, until the first day of January, one thousand eight hundred and seventy-nine, levy a tax not to exceed the rate of one per centum, and from and after that time, a tax not to exceed the rate of three-fourths of one per centum, to pay existing indebtedness of said city, and the interest thereon.

Intended to define the extent of direct municipal tax on property; has no reference to specific tax on privileges.—Ex parte City Council, 64 Ala. 463. **Nor on local assessments for purposes of local street improvements.**—Mayor v. Klein, 89 Ala. 461. **Limits rate of taxation and makes the State assessment for the preceding year the only basis of value,** regardless of any increase.—Mayor v. Klein, 89 Ala. 461; Elyton Land Co. v. Mayor, 89 Ala. 477. **Legislature has the right to levy and collect a tax on property in Mobile for the purpose of paying its debts,** up to the limit here fixed.—Hare v. Kennerly, 83 Ala. 608.

§8. At the first session of the general assembly after the ratification of this Constitution, the salaries of the following officers shall be reduced at least twenty-five per centum, viz.: Governor, secretary of state, state auditor, state treasurer, attorney-general, superintendent of education, judges of the supreme and circuit courts, and chancellors; and after said reduction, the general assembly shall not have the power to increase the same, except by a vote of a majority of all the members elected to each house, taken by yeas and nays, and entered on the journals; *Provided*, this section shall not apply to any of said officers now in office.

§9. The general assembly shall not have the power to require the counties or other municipal corporations to pay any charges which are now payable out of the State treasury.

ARTICLE XII.

MILITIA.

§1. All able-bodied male inhabitants of this State, between the ages of eighteen years and forty-five years, who are citizens of the United States, or have declared their intention to become such citizens, shall be liable to military duty in the militia of the State.

§2. The general assembly, in providing for the organization, equipment, and discipline of the militia, shall conform as nearly as practicable to the regulations for the government of the armies of the United States.

§3. Each company and regiment shall elect its own company and regimental officers; but if any company or regiment shall neglect to elect such officers within the time prescribed by law, they may be appointed by the governor.

§4. Volunteer organizations of infantry, cavalry, and artillery may be formed in such manner, and under such restrictions, and with such privileges, as may be provided by law.

§5. The militia and volunteer forces shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at musters, parades, and elections, and in going to and returning from the same.

§6. The governor shall, except as otherwise provided herein, be commander-in-chief of the militia and volunteer forces of the State, except when in the service of the United States, and shall, with the advice and consent of the senate, appoint all general officers, whose terms of office shall be for four years. The governor, the generals, and regimental and battalion commanders shall appoint their own staffs, as may be provided by law.

§7. The general assembly shall provide for the safe-keeping of the arms, ammunition, and accoutrements, military records, banners, and relics of the State.

§8. The officers and men of the militia and volunteer forces shall not be entitled to, or receive any pay, rations, or emoluments, when not in active service.

ARTICLE XIII.

EDUCATION.

§1. The general assembly shall establish, organize, and maintain a system of public schools throughout the State, for the equal benefit of the children thereof between the ages of seven and twenty-one years; but separate schools shall be provided for the children of citizens of African descent.

Mandatory.—Elsberry v. Seay, 83 Ala. 614. **System must extend throughout the State,** operating upon and in favor of all alike, without special local rights, privileges or burdens.—Schultes v. Eberly, 82 Ala. 242; Elsberry v. Seay, 83 Ala. 614. **Separate school districts may be established,** but no implied privileges arise in their favor. Schultes v. Eberly, 82 Ala. 242. **Institutions of learning, distinct from the public schools, may be established,** but the public school fund may not be reduced below the minimum for their maintenance.—Elsberry v. Seay, 83 Ala. 614.

§2. The principal of all funds arising from the sale or other disposition of lands or other property, which has been or may hereafter be granted or intrusted to this State, or given by the United States, for educational purposes, shall be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific objects of the original grants or appropriations.

§3. All lands or other property given by individuals, or appropriated by the State for educational purposes, and all estates of deceased persons who die without leaving a will or heir, shall be faithfully applied to the maintenance of the public schools.

§4. The general assembly shall also provide for the levying and collection of an annual poll-tax, not to exceed one dollar and fifty cents on each poll,

which shall be applied to the support of the public schools in the counties in which it is levied and collected.

Poll-tax must bear the expense of its own assessment and collection.—Shaver v. Robinson, 59 Ala. 195.

§5. The income arising from the sixteenth section trust fund, the surplus revenue fund, until it is called for by the United States government, and the funds enumerated in sections three and four of this article, with such other moneys, to be not less than one hundred thousand dollars per annum, as the general assembly shall provide by taxation or otherwise, shall be applied to the support and maintenance of the public schools; and it shall be the duty of the general assembly to increase, from time to time, the public school fund, as the condition of the treasury and the resources of the State will admit.

Other than the poll-tax no provision is made for special taxation for educational purposes.—Schultes v. Eberly, 82 Ala. 242. Law "setting apart and appropriating from the school fund for the colored people" a fund for the maintenance of an University for colored people is an unauthorized perversion.—Elsberry v. Seay, 83 Ala. 614.

§6. Not more than four per cent. of all moneys raised, or which may hereafter be appropriated for the support of public schools, shall be used or expended otherwise than for the payment of teachers employed in such schools; *Provided*, that the general assembly may, by a vote of two-thirds of each house, suspend the operation of this section.

§7. The supervision of the public schools shall be vested in a superintendent of education, whose powers, duties, term of office, and compensation shall be fixed by law. The superintendent of education shall be elected by the qualified voters of the State in such manner, and at such time, as shall be provided by law.

An "University for Colored People," not under the control of the superintendent of education, is not a public school.—Elsberry v. Seay, 83 Ala. 614.

§8. No money raised for the support of the public schools of the State shall be appropriated to, or used for, the support of any sectarian or denominational school.

§9. The State University and the Agricultural and Mechanical College shall each be under the management and control of a board of trustees. The board for the university shall consist of two members from the congressional district in which the university is located, and one from each of the other congressional districts in the State. The board for the Agricultural and Mechanical College shall consist of two members from the congressional district in which the college is located, and one from each of the other congressional districts in the State. Said trustees shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold office for a term of six years, and until their successors shall be appointed and qualified. After the first appointment each board shall be divided into three classes, as nearly equal as may be. The seats of the first class shall be vacated at the expiration of two years, and those of the second class in four years, and those of the third class at the end of six years, from the date of appointment, so that one-third may be chosen biennially. No trustee shall receive any pay or emolument, other than his actual expenses incurred in the discharge of his duties as such. The governor shall be ex officio president, and the superintendent of education ex officio a member of each of said boards of trustees.

§10. The general assembly shall have no power to change the location of the State University, or the Agricultural and Mechanical College, as now established by law, except upon a vote of two-thirds of the members of the general assembly, taken by yeas and nays, and entered upon the journals.

§11. The provisions of this article, and of any act of the general assembly, passed in pursuance thereof, to establish, organize, and maintain a system of public schools throughout the State, shall apply to Mobile county only so far as to authorize and require the authorities designated by law to draw the portion of the funds to which said county will be entitled for school purposes, and to make reports to the superintendent of education, as may be prescribed by law. And all special incomes and powers of taxation, as now authorized by law for the benefit of public schools in said county, shall remain undisturbed until otherwise provided by the general assembly: *Provided*, that separate schools for each race shall always be maintained by said school authorities.

ARTICLE XIV.

CORPORATIONS.—PRIVATE CORPORATIONS.

§1. Corporations may be formed under general laws, but shall not be created by special act, except for municipal, manufacturing, mining, immigration, industrial, and educational purposes, or for constructing canals, or improving navigable rivers and harbors of this State, and in cases where, in the judgment of the general assembly, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered, amended, or repealed.

To prevent irrepealable exemptions and discriminations.—Mayor v. Stonewall Ins. Co., 53 Ala. 570. **The formation of corporations under the general law, rather than by special act, is a favored public policy.**—Cahall v. Cit. Mut. Bldng. Assn., 61 Ala. 232. **The test of the power to confer franchises is whether the privilege conduces to the public good.**—Horst v. Moses, 48 Ala. 129. **Defects in the organization of a corporation organized under the general law may be cured by special statute.**—Central A. & M. Assn. v. Ala. Gold Life Ins. Co., 70 Ala. 120; State v. Webb, 110 Ala. 214.

§2. All existing charters or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place and business been commenced in good faith, at the time of the ratification of this Constitution, shall thereafter have no validity.

§3. The general assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same, or pass any general or special law for the benefit of such corporation, other than in execution of a trust created by law or by contract, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.

Acceptance of amendment by acquiescence is sufficient to show consent to hold charter subject to conditions imposed by the Constitution.—State v. Montgomery Light Co., 102 Ala. 594.

§4. No foreign corporation shall do any business in this State without having at least one known place of business and an authorized agent or agents therein; and such corporation may be sued in any county where it does business by service of process upon an agent anywhere in this State.

Self-executing, needing no statute to give it operation.—A. U. Tel. Co. v. W. U. Tel. Co., 67 Ala. 26; Beard v. U. & A. Pub. Co., 71 Ala. 60; Sherwood v. Alvis, 83

Ala. 115; Dudley v. Collier, 87 Ala. 431; Farrior v. N. E. Mort. Sec. Co., 88 Ala. 275; Mullens v. Am. F. L. M. Co., 88 Ala. 280; Craddock v. Am. F. L. M. Co., 88 Ala. 281; Christian v. Am. F. L. M. Co., 89 Ala. 198; N. E. Mtg. Sec. Co. v. Ingram, 91 Ala. 337. **Inflexible and unalterable by legislature.**—Farrior v. N. E. Mort. Sec. Co., 88 Ala. 275; N. E. Mtg. Sec. Co. v. Ingram, 91 Ala. 337; Nelms v. E. A. L. M. Co., 92 Ala. 157; Sullivan v. Sullivan T. Co., 103 Ala. 371. **A legitimate exercise of police power and not in conflict with the Federal Constitution or any act of Congress.**—Am. U. Tel. Co. v. W. U. Tel. Co., 67 Ala. 26; Dudley v. Collier, 87 Ala. 431. **Not intended to interfere with interstate commerce,** and not applicable to corporations engaged therein as to such business.—Ware v. Hamilton-B. Shoe Co., 92 Ala. 145. **Foreign corporations are not citizens within meaning of Federal Constitution,** and are wholly dependent on state laws for privilege; yet their contracts with citizens are subject to interstate commerce regulations and state cannot interfere with them.—Ware v. H-B. Shoe Co., 92 Ala. 145; Nelms v. E. A. L. M. Co., 92 Ala. 157; Noble v. Mitchell, 100 Ala. 519. **A contract to purchase shoes made between a citizen and a Missouri corporation, whether made here or there, is interstate commerce.**—Ware v. H-B. Shoe Co., 92 Ala. 145; Nelms v. E. A. L. M. Co., 92 Ala. 157. **And so the sale of brick in another state** to be delivered here.—Cook v. Rome Brick Co., 98 Ala. 409. **And so the sale here of books in another state to be delivered here.**—Culberson v. Am. T. & B. Co., 107 Ala. 457. **Loaning money is not interstate commerce; a single act constitutes "doing business" within the meaning of this section.**—Nelms v. E. A. L. M. Co., 92 Ala. 157; Farrior v. N. E. Mtg. Sec. Co., 88 Ala. 275; Mullens v. Mtge. Co., 88 Ala. 280; Dundee Mtge. Co., v. Nixon, 95 Ala. 318; Guin v. N. E. Mtg. Sec. Co., 92 Ala. 135; State v. Bristol Bank, 108 Ala. 3. **Soliciting and receiving subscriptions for a newspaper published in another state is not "doing business" within meaning.**—Beard v. U. & A. Pub. Co., 71 Ala. 60. **Nor the institution and prosecution of suits.**—Christian v. Mtge. Co., 89 Ala. 198; Cook v. Rome Brick Co., 98 Ala. 409. **Before the statute imposing a penalty for non-compliance, an executed contract made by a corporation not complying was not void;** and the other party could not question the contracting capacity of the corporation.—Sherwood v. Alvis, 83 Ala. 115; Craddock v. Am. F. L. M. Co., 88 Ala. 281. **Since the statute the contract is void and, if executory, will not be enforced.**—Dudley v. Collier, 87 Ala. 431; Farrior v. N. E. Mtg. Sec. Co., 88 Ala. 275; Collier v. Davis, 94 Ala. 456. **Sufficiency of appointment of agent and designation of place of business.**—N. E. Mtg. Sec. Co. v. Ingram, 91 Ala. 337; Nelms v. Mtge. Co., 92 Ala. 157; Mtge. Co. v. Sewall, 92 Ala. 163; McCall v. Mtge. Co., 99 Ala. 427; McLeod v. Mtge. Co., 100 Ala. 496. **Foreign corporation may be sued in any county where it is doing business;** if not doing any business, in the county designated in its certificate.—Sullivan v. Sullivan T. Co., 103 Ala. 371.

§5. No corporation shall engage in any business other than that expressly authorized in its charter.

Cannot engage in any business not expressly or impliedly authorized by original or amended charter.—State v. Montgomery Light Co., 102 Ala. 594. **Contract made by or with a corporation in excess of its corporate authority confers no rights, and party promising may invoke ultra vires.**—Smith v. Ala. Life Ins. Co., 4 Ala. 558; City Council v. M. & W. Plank Road Co., 31 Ala. 76; Waddell v. A. & F. R. Co., 31 Ala. 323; Grand Lodge v. Waddell, 36 Ala. 313; Marion Savings Bank v. Dunklin, 54 Ala. 471; Chambers v. Falkner, 65 Ala. 448; Eufaula v. McNab, 67 Ala. 588; Wilks v. G. P. R. Co., 79 Ala. 180; Westinghouse Mach. Co. v. Wilkinson, 79 Ala. 312; Sherwood v. Alvis, 83 Ala. 115; Chewalla Lime Co. v. Dismukes, 87 Ala. 344; Tenn. R. Trans. Co. v. Kavanaugh, 93 Ala. 324; s. c., 101 Ala. 1.

§6. No corporation shall issue stock or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general laws, nor without the consent of the persons holding the larger amount in value of stock, first obtained at a meeting to be held after thirty days' notice given in pursuance of law.

Does not prohibit a corporation from pledging its bonds for loan of less than their face value.—Nelson v. Hubbard, 96 Ala. 238. **Requirements before increasing stock or bonded debt are for the benefit of stockholders, and may be waived.**—Nelson v. Hubbard, 96 Ala. 238. **And cannot be invoked by creditors.**—Barrett v. Pollak, 108 Ala. 390; Ala. I. & S. Co. v. McKeever, 112 Ala. 134. **Has no reference to the product of the business.**—Ib. **To protect stockholders and the public and to prevent "stock watering."**—Williams v. Evans, 87 Ala. 725; State v. Webb, 97 Ala. 111. **A subscription for stock with the understanding that the corporation shall issue stock of a greater face value than the amount of money paid,** or the reasonable value of the property or labor furnished, **is violative.**—Williams v. Evans, 87 Ala. 725; Tutwiler v. Tuskaloosa C. I. & L. Co., 89 Ala. 391; Parsons v. Joseph, 92 Ala. 403; Elyton Land Co. v.

Birmingham W. & E. Co., 92 Ala. 407; Gay v. Brierfield C. & I. Co., 94 Ala. 303; Davis v. Montgomery F. & C. Co., 101 Ala. 127; Ala. Nat. Bank v. Halsey, 109 Ala. 196.

§7. Municipal and other corporations and individuals invested with the privilege of taking private property for public use, shall make just compensation for the property taken, injured, or destroyed by the construction or enlargement of its works, highways, or improvements, which compensation shall be paid before such taking, injury, or destruction. The general assembly is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporations or individuals made by viewers, or otherwise; and the amount of such damages in all cases of appeal shall, on the demand of either party, be determined by a jury according to law.

Liberally construed in favor of the citizen.—City Council v. Townsend, 80 Ala. 489; City Council v. Maddox, 89 Ala. 181. **Has no application, where a municipal corporation tears down obstructions or fills up excavations in sidewalks.**—Winter v. City Council, 83 Ala. 589. **Prepayment of just compensation before the taking is complete, is guaranteed,** without regard to the agency employed, in the taking, unless it be the State.—Montgomery S. Ry. Co. v. Sayre, 72 Ala. 443; Smith v. Inge, 80 Ala. 283; City Council v. Townsend, 80 Ala. 489; s. c., 84 Ala. 478; Woodward I. Co. v. Cabaniss, 87 Ala. 328; Postal T. C. Co. v. A. G. S. R. Co., 92 Ala. 331; A. M. Ry. Co. v. Newton, 94 Ala. 443; M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala. 571; Highland Ave. & B. R. Co. v. Matthews, 99 Ala. 24. **Extent to which the municipal corporation is liable for consequential damages if injury or destruction is produced by the construction or enlargement of some work,** highway or improvement, as by changing the grade of a street.—C. & W. Ry. Co. v. Witherow, 82 Ala. 190; City Council v. Maddox, 89 Ala. 181; Evans v. S. & W. Ry. Co., 90 Ala. 54; Town of Avondale v. McFarland, 101 Ala. 381 (overruling City Council v. Townsend, 80 Ala. 489; s. c., 84 Ala. 478). **The crossing of one railroad by another is a taking of private property.**— M. & G. R. Co. v. A. M. Ry. Co., 87 Ala. 501; M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala. 571. **Does not authorize a law giving a municipal corporation the right to open streets at the cost of adjacent property in proportion to benefit received.**—Miller v. Mobile, 47 Ala. 163. "Determined by a jury according to law" means a jury of twelve men, according to the course of common law; right of appeal to a jury is preserved.—Woodward I. Co. v. Cabaniss, 87 Ala. 328; Postal T. C. Co. v. A. G. S. R. Co., 92 Ala. 331; A. M. Ry. Co. v. Newton, 94 Ala. 443; M. & C. R. Co. v. Hopkins, 108 Ala. 159; M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala. 571.

§8. Dues from private corporations shall be secured by such means as may be prescribed by law; but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her.

If property is taken in payment of subscription for stock at grossly excessive valuation, creditors may proceed against such subscribers as for a partially paid subscription.—Parsons v. Joseph, 92 Ala. 403; Elyton Land Co. v. Birmingham W. & E. Co., 92 Ala. 407. See citations to art. I., sec. 24.

§9. No corporation shall issue preferred stock without the consent of the owners of two-thirds of the stock of said corporation.

§10. The general assembly shall have the power to alter, revoke, or amend any charter of incorporation now existing, and revocable at the ratification of this Constitution, or any that may hereafter be created, whenever, in their opinion, it may be injurious to the citizens of the State; in such manner, however, that no injustice shall be done to the corporators. No law hereafter enacted shall create, renew, or extend the charter of more than one corporation.

Power of repeal.—Bibb v. Hall, 101 Ala. 79.

§11. Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this State, and connect the same with other lines; and the general assembly shall, by general law of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph company shall con-

solidate with, or hold a controlling interest in the stock or bonds of any other telegraph company owning a competing line, or acquire, by purchase or otherwise, any other competing line of telegraph.

§12. All corporations shall have the right to sue, and shall be subject to be sued in all courts, in like cases as natural persons.

No burden can be imposed on one class of persons, natural or artificial, which is not, under like conditions, imposed on all other classes.—Mayor v. Stonewall Ins. Co., 53 Ala. 570; S. & N. A. R. Co. v. Morris, 65 Ala. 193; Green v. State, 73 Ala. 26; Home Protection v. Richards, 74 Ala. 466; Smith v. L. & N. R. Co., 75 Ala. 449; Carter v. Coleman, 84 Ala. 256; Youngblood v. Birmingham T. & S. Co., 95 Ala. 521.

§13. The term "corporation," as used in this article, shall be construed to include all joint-stock companies, or any associations having any of the powers or privileges of corporations, not possessed by individuals or partnerships.

BANKS AND BANKING.

§14. The general assembly shall not have the power to establish or incorporate any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit, or bills payable to order or bearer, except under the conditions prescribed in this Constitution.

§15. No banks shall be established otherwise than under a general banking law, nor otherwise than upon a specie basis.

§16. All bills or notes issued as money shall be at all times redeemable in gold or silver, and no law shall be passed sanctioning, directly or indirectly, the suspension by any bank or banking company of specie payment.

§17. Holders of bank-notes, and depositors who have not stipulated for interest, shall, for such notes and deposits, be entitled, in case of insolvency, to the preference of payment over all other creditors.

§18. Every bank or banking company shall be required to cease all banking operations within twenty years from the time of its organization (unless the general assembly shall extend the time), and promptly thereafter close its business; but shall have corporate capacity to sue and shall be liable to suit, until its affairs and liabilities are fully closed.

§19. No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed by law to individuals for lending money.

§20. The State shall not be a stockholder in any bank, nor shall the credit of the State ever be given or loaned to any banking company, association, or corporation.

RAILROADS AND CANALS.

§21. All railroads and canals shall be public highways, and all railroad and canal companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points in this State, and to connect, at the State line, with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport, each, the other's freight, passengers, and cars, loaded or empty, without delay or discrimination.

Railroad crossing another.—M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala. 571; M. & C. R. Co. v. Hopkins, 108 Ala. 159.

§22. The general assembly shall pass laws to correct abuses and prevent

unjust discrimination and extortion in the rates of freights and passenger tariffs on railroads, canals, and rivers in this State.

§23. No railroad or other transportation company shall grant free passes, or sell tickets or passes at a discount other than as sold to the public generally, to any member of the general assembly, or to any person holding office under this State or the United States.

§24. No street passenger railway shall be constructed within the limits of any city or town, without the consent of its local authorities.

§25. No railroad, canal, or other transportation company, in existence at the time of the ratification of this Constitution, shall have the benefit of any future legislation by general or special laws, other than in execution of a trust created by law, or by contract, except on the condition of complete acceptance of all the provisions of this article.

ARTICLE XV.

OATH OF OFFICE.

§1. All members of the general assembly, and all officers, executive and judicial, before they enter upon the execution of the duties of their respective offices, shall take the following oath or affirmation, to wit:

"I, ———, solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability. So help me God."

Which oath may be administered by the presiding officer of either house of the general assembly, or by any officer authorized by law to administer an oath.

ARTICLE XVI.

MISCELLANEOUS PROVISIONS.

§1. No person holding an office of profit under the United States, except postmasters whose annual salary does not exceed two hundred dollars, shall, during his continuance in such office, hold any office of profit under this State; nor shall any person hold two offices of profit at one and the same time under this State, except justices of the peace, constables, notaries public, and commissioners of deeds.

§2. It is made the duty of the general assembly to enact all laws necessary to give effect to the provisions of this Constitution.

ARTICLE XVII.

MODE OF AMENDING THE CONSTITUTION.

§1. The general assembly may, whenever two-thirds of each house shall deem it necessary, propose amendments to this Constitution, which, having been read on three several days in each house, shall be duly published in such manner as the general assembly may direct, at least three months before the next general election for representatives, for the consideration of the people; and it shall be the duty of the several returning officers, at the next general election which shall be held for representatives, to open a poll

for the vote of the qualified electors on the proposed amendments, and to make a return of said vote to the secretary of state; and, if it shall thereupon appear that a majority of all the qualified electors of the State, who voted at said election, voted in favor of the proposed amendments, said amendments shall be valid, to all intents and purposes, as parts of this Constitution; and the result of such election shall be made known by proclamation of the governor.

§2. No convention shall hereafter be held for the purpose of altering or amending the Constitution of this State, unless the question of convention or no convention shall be first submitted to a vote of all the electors of the State, and approved by a majority of those voting at said election.

SCHEDULE.

In order that no injury or inconvenience may arise from the alterations and amendments made by this Constitution to the existing Constitution of this State, and to carry this Constitution into effect, it is hereby ordained and declared—

1. That all laws in force at the ratification of this Constitution, and not inconsistent therewith, shall remain in full force, until altered or repealed by the general assembly; and all rights, actions, prosecutions, claims, and contracts of this State, counties, individuals, or bodies corporate, not inconsistent with this Constitution, shall continue to be as valid as if this Constitution had not been ratified.

2. That all bonds executed by or to any officer of this State, all recognizances, obligations, and all other instruments executed to this State, or any subdivision or municipality thereof, before the ratification of this Constitution, and all fines, taxes, penalties, and forfeitures due and owing to this State, or any subdivision, or to any municipality thereof; and all writs, suits, prosecutions, claims, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the ratification of this Constitution. All indictments which may have been found, or which may hereafter be found, for any crime or offense committed before the ratification of this Constitution, shall be proceeded upon in the same manner as if this Constitution had not been ratified.

3. That all the executive and judicial officers, and all other officers in this State, who shall have been elected at the election held in this State, on third day of November, eighteen hundred and seventy-four, or who may have been appointed since that time, and all members of the present general assembly, and all that may hereafter be elected members of the present general assembly, and all other officers holding office at the time of the ratification of this Constitution, except such as hold office under any act of the general assembly, shall continue in office, and exercise the duties thereof until their respective terms shall expire, as provided by the present Constitution and laws of this State.

4. This Constitution shall be submitted to the qualified electors of this State for ratification or rejection, as authorized and required by an act of the general assembly of this State, entitled "An act to provide for the calling of a convention to revise and amend the Constitution of this State,"

approved nineteenth day of March, Anno Domini, eighteen hundred and seventy-five.

5. If at said election the said Constitution shall be found to have been ratified by a majority of all of the qualified electors voting at said election, the said new Constitution, so ratified, shall go into effect as the new Constitution of the State of Alabama within the time stated in the proclamation of the governor, and shall thereafter be binding and obligatory as such upon all the people of this State, according to the provisions of said act, approved nineteenth day of March, Anno Domini, eighteen hundred and seventy-five.

6. That instead of the publication as required by section twelve of said act, the governor of the State is hereby authorized to take such steps as will give general publicity and circulation to this Constitution in as economical manner as practicable.

7. That all laws requiring an enumeration of the inhabitants of this State during the year eighteen hundred and seventy-five are hereby avoided.

8. That the board of education of this State is hereby abolished.

9. The salaries of the executive and judicial, and all other officers of this State who may be holding office at the time of the ratification of this Constitution, and the pay of the present members of the general assembly, shall not be affected by the provisions of this Constitution.

LEROY POPE WALKER, *President.*

JOHN F. BURNS,	F. W. SYKES,
J. H. WHITE,	E. H. MOREN,
SUMPTER LEA,	WM. C. OATES,
WM. A. SMITH,	STEPHEN C. ALLGOOD,
R. A. MCCLELLAN,	SAMUEL J BOLLING,
E. D. WILLETT,	LEROY BREWER,
RUFUS W. COBB,	JOHN T. HEFLIN,
JOHN W. INZER,	JULIUS G. ROBINSON,
WM. G. LITTLE, JR.	SAMUEL FORWOOD,
W. GARRETT,	JOHN GREEN,
JOHN MANASCO,	ROBERT A. LONG,
LEWIS M. STONE,	CHARLES C. LANGDON,
WILEY COLEMAN,	F. S. LYON,
ANDREW C. HARGROVE,	HENRY A. WOOLF,
EVAN G. RICHARDS,	WM. M. HAMES,
HENRY W. LAIRD,	THOS. J. BURTON,
WM. J. O'BANNON,	B. F. JOHNSON,
GEO. S. GULLETT,	ALBURTO MARTIN,
GEO. W. DELBRIDGE,	R. C. TORREY,
ANDREW J. INGLE,	M. T. AKERS,
FRANK A. NISBET,	ALBERT W. PLOWMAN,
JOHN GAMBLE,	WM. A. MUSGROVE,
ISAAC H. PARKS,	JAMES D. MEADOWS,
HENRY C. LEA,	W. J. SAMFORD,
JOEL D. MURPHREE,	GEO. P. HARRISON, JR.,
J. B. KELLY,	JOHN D. RATHER,
J. N. SWAN,	CEPHAS B. TAYLOR,

BENJ. F. WEATHERS,	JAMES AIKEN,
MICAJAH L. DAVIS,	E. A. POWELL,
J. W. JONES,	A. C. GORDON,
JOHN S. DICKINSON,	CULLEN A. BATTLE,
WM. BURGESS,	JONATHAN BLISS,
P. M. CALLOWAY,	D. B. BOOTH,
JOHN P. RALLS, M. D.,	S. T. PRINCE,
WM. S. MUDD,	A. A. STERRITT,
JOHN A. FOSTER,	H. J. LIVINGSTON,
JAMES L. PUGH,	WM. M. LOWE,
JOS. E. P. FLOURNOY,	S. S. SCOTT,
JOHN D. HUDSON,	CHARLES GIBSON,
R. O. PICKETT,	THOMAS H. HERNDON,
RICHARD H. POWELL,	JESSE E. BROWN,
E. A. O'NEAL,	DAVID S. NOWLIN,
THOMAS B. NESMITH,	JOHN H. NORWOOD,
WM. GREEN,	MONTGOMERY GILBREATH.

Attest—BENJ. H. SCREWS, *Secretary.*

CODE OF ALABAMA,
1896.

THE CRIMINAL CODE.

CHAPTER 119.

ABDUCTION AND KIDNAPPING. 4301–4304.

4301 (3743) (4309) (3666) (124). **Forcible marriage, etc., of woman.**—Any person, who unlawfully takes any woman against her will, and, by menace, force, or duress, compels her to marry him or any other person, or to be defiled, or who unlawfully takes any woman against her will with the intent to compel her, by menace, force, or duress, to marry him or any other person, or to be defiled, must, on conviction, be imprisoned in the penitentiary for not less than five years. (Form 28.)

4302 (3744) (4310) (3667) (125). **Taking girl under fourteen, from father, etc., for prostitution or marriage.**—Any person, who takes any girl under fourteen years of age from her father, mother, guardian, or other person having the legal charge of her, for the purpose of prostitution, concubinage, or marriage, must, on conviction, be imprisoned in the penitentiary for not less than two years.

Prostitution defined—is more than enticing away for one act of illicit intercourse.—Haygood's case, 98 Ala. 61.

4303 (3745) (4322) (3688) (145). **Decoying off or detaining children.**—Any person, who unlawfully takes or decoys away any child with intent to detain or conceal it from its parents, guardian, or other person having the lawful charge of it, or who unlawfully detains any child from its parents, guardian, or other person having lawful charge of it, must, on conviction, be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than two years. (Form 33.) Feb. 4, 1893, p. 214.

4304 (3746) (4323) (3689) (146). **Kidnapping.**—Any person, who forcibly or unlawfully confines, inveigles, or entices away another, with the intent to cause him to be secretly confined, or imprisoned against his will, or to be sent out of the state against his will, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than ten years. (Form 56.)

Gandy's case, 81 Ala. 68.

CHAPTER 120.

ABORTION.

As amended Dec. 13, 1894, p. 131.

4305 (4022) (4192) (3605) (64). **Attempts to procure abortion.** Any person, who willfully administers to any pregnant woman any drug or substance, or uses or employs any instrument, or other means, to procure her miscarriage, unless the same is necessary to preserve her life, and done for that purpose, must, on conviction, be fined not more than five hundred dollars, and imprisoned in the penitentiary for not less than two, nor more than five years.

CHAPTER 121.

ABUSIVE, INSULTING, OR OBSCENE LANGUAGE.

4306 (4031) (4203) (3613) (76). **Using obscene or insulting language in presence of females, etc.**—Any person who enters into, or goes sufficiently near to the dwelling-house of another, and, in the presence or hearing of the family of the occupant thereof, or any member of his family, or any person, who, in the presence or hearing of any female, uses abusive, insulting or obscene language, must, on conviction, be fined not more than two hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county for not more than six months. (Form 3.)

Constituents of the offense.—Benson's case, 68 Ala. 513. As to this offense before the present section, see Henderson's case, 63 Ala. 193; Ivey's case, 61 Ala. 58; Comer's case, 62 Ala. 320. Sufficiently near to be heard, regarded as in the presence.—Henderson's case, 63 Ala. 193. The words "If you don't give up my pistol, I'll knock your brains out, by God," held sufficiently insulting.—Benson's case, 68 Ala. 513. Meaning of dwelling-house, whether house of wife or husband.—Bragg's case, 69 Ala. 204. Indictment need not set out the words used; sufficient to pursue language of the statute.—Yancy's case, 63 Ala. 141; Weaver's case, 79 Ala. 279. Nor is it necessary to prove that the words were actually heard by the females.—Ib. And if the words are alleged, need not prove same words, but sufficient if there is no variance in the sense. Benson's case, 68 Ala. 544. Offense cannot be committed jointly, unless one person incites other to use the language.—Cox's case, 76 Ala. 66. But an acquittal of one would, on reversal, authorize a nol. pros. against him and trial of the other.—Ib. Witness may testify he was near enough to hear, but did not hear the language imputed to defendant.—Ib. Whether the language used was obscene or insulting is a question for the jury.—Carter's case, 107 Ala. 146. It is no defense that accused had no knowledge of the presence of the female. Laney's case, 105 Ala. 105. The first clause of the statute protects the home or any member of the family; the second, any female, anywhere and everywhere. McVay's case, 100 Ala. 110. **Variance:** An indictment under either clause will support conviction, on proof under other clause.—McVay's case, 100 Ala. 110. A witness may state that a third party could have heard certain language at a given distance.—McVay's case, 100 Ala. 110. That accused was in his own yard, quarreling with his own family, not intending for his langauge to be heard by his neighbor's family, is no defense.—Thomas's case, 92 Ala. 85; Mullen's case, 82 Ala. 42. Bad character of female no defense, but her habit of using generally, or to accused, the interdicted language is relevant, in mit-

igation or extenuation.—Golson's case, 86 Ala. 601. The tone of the voice is immaterial if the language is heard.—Mullen's case, 82 Ala. 42. The words "I'll go where I darn please, and it don't make a darn bit of difference where it is," sufficient to support prosecution.—Weaver's case, 79 Ala. 279.

CHAPTER 122.

ABUSIVE OR THREATENING LETTERS.

4307 (3769) (4106) (3553) (13). **Sending threatening or abusive letters.**—Any person, who sends to another a threatening or abusive letter, which may tend to provoke a breach of the peace, must be punished, on conviction, by fine and imprisonment in the county jail, or hard labor for the county; the fine not to exceed in any case five hundred dollars, and the imprisonment or hard labor not to exceed six months.

Graves's case, 9 Ala. 447; Crow's case, 18 Ala. 546; Reid's case, 53 Ala. 402.

CHAPTER 123.

ACCESSORIES AND ACCOMPLICES. 4308, 4309.

4308 (3704) (4802) (4129) (480). **Accessories before the fact; principals in first and second degrees; distinction abolished.**—The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abolished; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid or abet in its commission, though not present, must hereafter be indicted, tried and punished as principals, as in the case of misdemeanors.

Participants equally guilty.—Wicks's case, 44 Ala. 398; Scott's case, 30 Ala. 503; Hughes's case, 75 Ala. 31. A principal in the second degree is one lending his countenance and encouragement or otherwise aiding, while another does the act.—Tally's case, 102 Ala. 25, 67. The aiding or abetting necessary to constitute principal in second degree must be by preconcert, or known to principal in first degree—the aid need not have caused the result; if it facilitated or gave confidence to principal in first degree it is sufficient.—Tally's case, 102 Ala. 69. Principals in first and second degree equally guilty.—Jolly's case, 94 Ala. 23. An accessory before the fact is one who causes or procures the commission of a crime by another.—Griffith's case, 90 Ala. 583. To make accessory guilty it is not necessary that crime be committed in manner or at time as agreed on. Griffith's case, 90 Ala. 583. Positive or direct proof not necessary to establish the relation of the parties.—Martin's case, 89 Ala. 115; Gibson's case, 89 Ala. 121; Tanner's case, 92 Ala. 1; Jolly's case, 94 Ala. 19; Elmore's case, 110 Ala. 63.

4309 (4005) (4150, 4151) (3589, 3590) (48, 49). **When concealing felon makes one an accessory after the fact.**—Any person, who, knowing that another has committed a felony, and not occupying

the legitimate relation of parent, child, brother, sister, husband, or wife to such offender, conceals, or gives any other aid to such offender, with intent to enable him to avoid or escape from arrest, trial, conviction, or punishment, is an accessory after the fact, and, on conviction, must be fined not more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months; and if the principal felon is dead, or has fled from justice, such accessory may be prosecuted and convicted before the principal; but in such case it shall be necessary to allege in the indictment, and to prove on the trial, the fact that the principal felon is dead or has fled.

CHAPTER 124.

ADULTERY AND FORNICATION.

4310 (4012) (4184) (3598) (57). **Living in adultery or fornication.**—If any man and woman live together in adultery or fornication, each of them must, on the first conviction of the offense, be fined not less than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months; on the second conviction for the offense, with the same person, the offender must be fined not less than three hundred dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months; and, on a third, or any subsequent conviction, with the same person, must be imprisoned in the penitentiary for two years. (Form 57.)

Adultery is illicit connection where either is married, and includes **fornication.**—Hinton's case, 6 Ala. 864; White's case, 74 Ala. 31. Must be **a living together;** one act, or occasional acts, not sufficient; what constitutes living together.—Hall's case, 53 Ala. 463; Smith's case, 39 Ala. 554; Collins's case, 14 Ala. 608; Quartemas's case, 48 Ala. 269. The question of living together is for the jury.—Hall's case, 53 Ala. 463. **Marriage** of one of the parties is essential to **adultery; fornication,** if neither is married, or in the unmarried party. Buchanan's case, 55 Ala. 154; Banks's case, 96 Ala. 79. Parties having gone through a prima facie valid marriage, unless they know the facts which make the marriage void, are not guilty.—Ib.; Vaughn's case, 83 Ala. 55; Banks's case, 96 Ala. 79. **Evidence:** Marriage may be proved by the acts and declarations of the parties.—Owens & Beaty's case, 94 Ala. 97. Evidence against one only of the parties should not be excluded, but limited to the one.—Ib. Adultery is not necessarily merged if the parties are guilty of bigamy.—Ib. Where parties defend by showing marriage to each other, prosecutor may show acts before the marriage.—Ib. One act of illicit intercourse, and an agreement or consent that it will be repeated if opportunity offers, is sufficient.—Bodiford's case, 86 Ala. 67 (Doubted, Hall's case, 88 Ala. 236). A living together for a single day or night, with intent to continue the illicit intercourse constitutes the offense. Walker's case, 104 Ala. 56; Brown's case, 108 Ala. 18. Voluntary sexual intercourse is not the offense, but only an element thereof.—Brown's case, 108 Ala. 18. The acts and conduct of the parties prior to and at the time of living together admissible.—Ib. The offense is seldom or never capable of direct proof. Ib. While occasional acts of adultery do not constitute the offense, yet the jury may convict on it.—Wright's case, 108 Ala. 60. The court may order a severance when one party has not been arrested.—Wright's case, 108 Ala. 60. An agreement for sexual intercourse consummated at convenience constitutes the offense.—Walker's case, 104 Ala. 56. The fact that a man makes frequent visits to a woman of bad reputation does not, as matter of law, tend to

show adultery.—Hall's case, 88 Ala. 236. A conviction may be had on proof of four acts of illicit intercourse in a month's time, and declarations by man that he did so whenever he desired.—Smith's case, 86 Ala. 57. Adulterous acts prior to time alleged may be shown.—Cross's case, 78 Ala. 430. On a joint trial for adultery the husband or wife of either party is not a competent witness.—Birge's case, 78 Ala. 435. Evidence of declarations and conduct, cohabitation and confessions of the parties, but not of general reputation, admissible to prove marriage.—Buchanan's case, 55 Ala. 154; Green's case, 59 Ala. 68; Cameron's case, 14 Ala. 546. Admissibility of evidence of anterior acts.—Lawson's case, 20 Ala. 65; McLeod's case, 35 Ala. 395; Alsabrook's case, 52 Ala. 24. Admissibility of evidence of subsequent acts.—Smitherman's case, 40 Ala. 255; Crowley's case, 13 Ala. 172; Alsabrook's case, 52 Ala. 24; Lawson's case, 20 Ala. 65. Proof of defendant's sex.—White's case, 74 Ala. 31. Proof of woman's general reputation for want of chastity; when admissible.—Blackman's case, 36 Ala. 295. When burden of proving death of absent husband, on woman claiming such defense.—Cameron's case, 14 Ala. 546. Confessions and admissions by either party, admissible only against party making them.—Lawson's case, 20 Ala. 65. Unless made in presence of the other.—Gore's case, 58 Ala. 391. Declarations, unconnected with conversations or admissions offered by the state, inadmissible.—Lawson's case, 20 Ala. 65. Conversations during childbirth, in presence of female, in which she took no part, inadmissible against her.—Ib. Direct fact of adultery need not be proved; presumptive or circumstantial evidence sufficient.—Ib.; Collins's case, 14 Ala. 608. See also Glaze's case, 9 Ala. 283; Crowley's case, 13 Ala. 172. One party competent witness for the other, to be weighed by the jury.—Crowley's case, 13 Ala. 172. Husband cannot testify against wife, or her paramour, for this offense.—Cotton's case, 62 Ala. 12. If proof shows both parties unmarried, **conviction** cannot be had under indictment charging adultery only.—Smitherman's case, 27 Ala. 23.

CHAPTER 125.

AFFRAYS.

4311 (3764) (4101) (3548) (8). **Punishment of affray.**—All persons guilty of an affray must, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. (Form 4.)

CHAPTER 126.

APPEAL AND WRIT OF ERROR.

ARTICLE 1.—APPEAL. 4312–4326.
2.—WRIT OF ERROR. 4327–4332.
3.—CONSIDERATION; AFFIRMANCE; REVERSAL. 4333–4335.

ARTICLE 1.

APPEAL.

4312 (4508) (4978) (4302) (751). **Questions of law reserved by defendant, by bill of exceptions.**—Any question of law arising in any of the proceedings in a criminal case, tried in the circuit or city

court, may be reserved by the defendant, but not by the state except as otherwise provided in this chapter, for the consideration of the supreme court; and if the question does not distinctly appear on the record, it must be reserved by bill of exceptions, duly taken and signed by the presiding judge, as in civil cases; but it is not necessary to reserve an exception to the giving or refusal of a special charge asked in writing, nor to the ruling of the court upon a demurrer to an indictment or other pleading, nor to any ruling or action of the court which is required to appear of record; but in every such case an exception is presumed on appeal.

Dec. 17, 1894, p. 126.

Exceptions must not be general; specific objections must be pointed out. Cohen's case, 50 Ala. 108; Irvin's case, Ib. 181; Gray's case, 63 Ala. 69; Hardin's case, Ib. 39; McGehee's case, 52 Ala. 224; Farley's case, 72 Ala. 170; Wood's case, 76 Ala. 35; Dickey's case, 68 Ala. 508; Williams's case, 68 Ala. 551. And point of objection must appear to have been subject of exception when made.—Reynolds's case, 68 Ala. 502. **Exception to charge of court** must be taken before jury leave the bar.—Reynolds's case, supra. **Certainty requisite in setting out matter of exception.**—Boswell's case, 63 Ala. 307; Strawbridge's case, 48 Ala. 308; Ex parte Mayfield, 63 Ala. 203; Burns's case, 49 Ala. 370. **Exception induced by party excepting,** not allowed.—Leonard's case, 66 Ala. 461; Shelton's case, 73 Ala. 5. **Bill of exceptions not necessary,** when error affirmatively appears of record.—Foster's case, 39 Ala. 229; Ex parte Knight, 61 Ala. 483. **Error without injury,** no ground of exception or complaint.—Taylor's case, 48 Ala. 157; Blevins's case, 68 Ala. 92; Edwards's case, 49 Ala. 334; Childs's case, 52 Ala. 14. When rule of "error without injury" does not apply.—Williams's case, 47 Ala. 659; Carson's case, 50 Ala. 135. When not applied in murder.—Mitchell's case, 60 Ala. 26. **Contents of bill of exceptions;** what sufficient recitals; should not be too voluminous; only material matters to be stated.—Smith's case, 68 Ala. 429. **Bill construed most strongly against exceptor.**—Powell's case, 25 Ala. 21. See Leyman's case, 47 Ala. 686. **When there is conflict between judgment-entry and bill of exceptions,** latter will control.—Reynolds's case, 68 Ala. 502. **Judge not bound to sign bill,** unless matter wherein court is supposed to err is made intelligible. Strawbridge's case, 48 Ala. 308; Ex parte Mayfield, 63 Ala. 203. **Motion to establish** bill of exceptions.—Judge's case, 58 Ala. 402. See ex parte Mayfield, 63 Ala. 203. **Solicitor alone can consent to signing** after adjournment of court.—Ex parte Mayfield, 63 Ala. 203. Bill of exceptions taken on 20th of July, 1871, and signed 18th of following December in vacation, under agreement, etc., is valid.—Stephens's case, 47 Ala. 696. Must affirmatively appear to have been signed in time prescribed.—Ib. Where court adjourned at midnight, Saturday, bill signed next morning not considered part of record; when taken and signed as required by law, becomes part of the record.—Williams's case, 47 Ala. 659; Bryant's case, 36 Ala. 270. **Mandamus to compel signing.**—Etheridge v. Hall, 7 Port. 47; Ex parte Huckabee, 71 Ala. 427. **General charge of the court;** power of court to state evidence.—Tidwell's case, 70 Ala. 33. How should present the case.—Ib. Requisites of general charge.—Martin's case, 47 Ala. 564; Judge's case, 58 Ala. 407; Evans's case, 62 Ala. 6; Woodbury's case, 69 Ala. 242; Jackson's case, Ib. 250. May read extracts from reported decisions.—Holley's case, 75 Ala. 14. If separable into two disconnected propositions, when erroneous.—Martin's case, 47 Ala. 564. Should charge on different aspects of the case.—Smith's case, 68 Ala. 424. Should not need explanation.—Wicks's case, 44 Ala. 398. Nor be upon irrelevant evidence.—DePhue's case, Ib. 32. May state a conflict in evidence.—Charles's case, 49 Ala. 332. May charge as to the evil consequences of the offense.—Weed's case, 55 Ala. 13; Shorter's case, 63 Ala. 130. **Charge on the effect of the evidence,** to convict or acquit; cannot be given ex mero motu.—Edgar's case, 43 Ala. 312; Beaseley's case, 50 Ala. 149; Foster's case, 47 Ala. 643. See Davidson's case, 63 Ala. 432. Nor if there is any material conflict in the evidence.—Allman v. Gann, 29 Ala. 240; Williams's case, 47 Ala. 659; Sanders's case, 58 Ala. 371. Nor when the evidence is circumstantial, or any material fact is to be inferred, and not a legal presumption from it.—Perkins's case, 50 Ala. 154; Sims's case, 43 Ala. 33; Sultzner's case, Ib. 24; Ward's case, 37 Ala. 158; Morgan's case, 33 Ala. 413; Easterling's case, 30 Ala. 46; Oliver's case, 17 Ala. 587; Weil's case, 52 Ala. 19. Nor where the evidence only tends to prove the case. Carter's case, 44 Ala. 29. When should give such charge for defendant. Green's case, 68 Ala. 539. When for the state.—McInnis's case, 51 Ala. 23. **Charges asked by parties;** if the charge states correct law, and is not abstract, it must be given.—Carson's case, 50 Ala. 135; Williams's case, 47 Ala.

659; Eiland's case, 52 Ala. 322; Edgar's case, 43 Ala. 45. Must be given or refused without qualification.—Edgar's case, 43 Ala. 45; Eiland's case, 52 Ala. 322; Clifton's case, 73 Ala. 473; Rice's case, 47 Ala. 38. If it requires explanation to prevent misleading, may be refused.—Dotson's case, 62 Ala. 141; Farrish's case, 63 Ala. 164; Duval's case, Ib. 12. But the statute does not deprive the court of the right to simplify or explain charges tending to mislead the jury.—Morris's case, 25 Ala. 57; Eiland's case, 52 Ala. 322; Turbeville's case, 40 Ala. 715; Hogg's case, 52 Ala. 2. If charge merely tends to mislead, party objecting should ask explanatory charges.—Evans's case, 62 Ala. 6; Eiland's case, 52 Ala. 322; Diggs's case, 49 Ala. 311; Scully's case, 39 Ala. 240; Wills's case, 74 Ala. 21; Williams's case, Ib. 18. Charges to be construed in connection with the general charge and other charges given.—Cunningham's case, 73 Ala. 51; Scott's case, 37 Ala. 117. Statute applies only to written charges.—Warren's case, 46 Ala. 549; Jacobson's case, 55 Ala. 151; Richardson's case, 54 Ala. 158. Record need not show charges indorsed "given" or "refused"; when presumed. Allen's case, 74 Ala. 557. When charge presumed to have been in writing; when made part of record; when not.—Little's case, 58 Ala. 265. Formerly, where there was, by bill of exceptions, no question of law reserved for review, appeal was dismissed.—Howell's case, 110 Ala. 23; Bond's case, 103 Ala. 90. Judgment as follows: "Guilty, fined $50.00, judgment confessed," will not support appeal.—Wright's case, 103 Ala. 95; Nichol's case, 100 Ala. 23. Defendant cannot be discharged on habeas corpus because transcript for appeal is not filed, before time has expired for signing bill of exceptions.—Ex parte Cameron, 81 Ala. 87. If question does not distinctly appear of record, it must be reserved by bill of exceptions—Bolling's case, 78 Ala. 469. Bill of exceptions is not part of record, and parts of record shown by it alone will not be reviewed.—Diggs's case, 77 Ala. 68. Rulings on demurrer cannot be shown by bill of exceptions only.—Powell's case, 89 Ala. 172. Appellate court will not correct error in sentence, even by agreement or consent.—Herrington's case, 87 Ala. 1; Zaner's case, 90 Ala. 657. Sentence for longer time than allowed by law for costs will be corrected on appeal.—Johnson's case, 94 Ala. 35. Original papers not sent up by order of judge will not be considered on appeal.—Gardner's case, 96 Ala. 12. Judgment-entry controls bill of exceptions.—Childs's case, 97 Ala. 49. Conviction without plea is erroneous—record must affirmatively show plea.—Childs's case, 97 Ala. 49; Bowers's case, 98 Ala. 83; Jackson's case, 91 Ala. 55. Presumptions are indulged in favor of lower court's rulings. Ryan's case, 100 Ala. 105; Jackson's case, 97 Ala. 5; Garrett's case, 97 Ala. 18. Motion in arrest of judgment founded on bill of exceptions only will not be reviewed.—Walker's case, 91 Ala. 76. Errors as to costs only will be corrected on appeal.—Bazell's case, 89 Ala. 14. Defective transcripts may be disallowed. Foster's case, 88 Ala. 182. Where the lower court tries the facts, its finding thereon will not be revised on appeal.—Wynn's case, 87 Ala. 137; Boyd's case, 88 Ala. 170. But if evidence is without conflict, it may.—Giles's case, 88 Ala. 230. What orders of the court in the trial of felonies must appear of record, and what not.—Washington's case, 81 Ala. 35. Refusal of motion for new trial not revisable on appeal.—Johnson's case, 87 Ala. 39; Cooper's case, 88 Ala. 107; Daniel's case, 88 Ala. 220; Jolly's case, 94 Ala. 19; Reeves's case, 95 Ala. 31; Hawthorn's case, 100 Ala. 26; Knight's case, 103 Ala. 48; Lowry's case, Ib. 50; Jones's case, 104 Ala. 30. Application for continuance not revisable on appeal, unless gross abuse.—Davis's case, 92 Ala. 20. Objections to indictment for misnomer or like cannot be considered for first time on appeal.—Welsh's case, 96 Ala. 92. See also note to section 612.

4313. Defendant may appeal from judgment of conviction.—Any person convicted of a criminal offense in the circuit court, or other court from which an appeal lies directly to the supreme court, may appeal from the judgment of conviction to the supreme court.

Does not lie until after final judgment on verdict; dismissed if prematurely taken.—Gore's case, 58 Ala. 391; Lee's case, 52 Ala. 321; Thomason's case, 70 Ala. 20. See Reece's case, Minor, 266; Harkins's case, 6 Ala. 57. Nor will appeal lie while motion for new trial pending.—Overton's case, 60 Ala. 73. Nor from order holding accused to answer an indictment.—May's case, 55 Ala. 164. Nor when defendant escaped; proceedings in such case.—Warwick's case, 73 Ala. 486 (overruling Parsons's case, 22 Ala. 50). All legitimate presumptions indulged in favor of primary court.—Childs's case, 58 Ala. 349; Mack's case, 63 Ala. 138; Green's case, 73 Ala. 26. When case stricken from docket of supreme court for want of jurisdiction.—Brigman's case, 46 Ala. 72. When decisions of United States supreme court binding.—Green's case, 73 Ala. 26. Void judgment will not support an appeal.—Howell's case, 110 Ala. 23; Bond's case, 103 Ala. 90; Wright's case, 103 Ala. 95; Nichol's case, 100 Ala. 23. Formerly, when no question of law had been reserved, revision of judgment could be obtained only by writ of error.—Ex parte Knight, 61 Ala. 382; Taylor's case, 112 Ala. 69.

4314. Appeal in habeas corpus cases.—Any party aggrieved by the judgment on the trial of a habeas corpus may appeal to the supreme court; and when, on habeas corpus, any person held in custody under a charge or conviction for crime, or for extradition as a fugitive from the justice of another state, is discharged from such custody; or when any person held in custody under an indictment by a grand jury charging him with a capital offense is admitted to bail, the solicitor or other prosecuting officer or attorney may take an appeal in behalf of the State to the supreme court; and in such cases the judgment must be suspended pending the appeal; but, except in capital cases, the party may give bail, with sufficient sureties, conditioned that he will appear before such court or officer as may be prescribed by the judge or chancellor, and abide the judgment rendered. When an appeal is taken under this section, the clerk of the court in which the record of the judgment appealed from may be, must transmit without delay a transcript of the record and certificate of appeal to the supreme court.

4315 (4515). **Appeal by State when statute declared unconstitutional.**—In all criminal cases when the act of the legislature under which the indictment or information is preferred is held to be unconstitutional, the solicitor may take an appeal in behalf of the State to the supreme court, which appeal shall be certified as other appeals in criminal cases; and the clerk must transmit without delay a transcript of the record and certificate of appeal to the supreme court.

Bauerman's case, 72 Ala. 252; Leach's case, 75 Ala. 36; Agee's case, 83 Ala. 110; Harrub's case, 95 Ala. 176.

4316. Limitation of appeals.—Appeals under this chapter, when taken from a judgment of conviction for an offense, must be taken within one year, and in all other cases within thirty days, from the rendition of the judgment.

4317. Bills of exception.—The provisions of this Code relating to the time and manner of taking, signing and establishing bills of exceptions in civil causes apply to criminal cases, so far as applicable.

Ex parte Cameron, 81 Ala. 87.

4318 (4511) (4980) (4304) (753). **In case of felony, judgment rendered and execution suspended pending appeal.**—When any question of law is reserved in case of a felony, and it shall be made known to the court that the defendant desires to take an appeal to the supreme court, judgment must be rendered against the defendant, but the execution thereof must be suspended pending the appeal, and the defendant held in custody.

In the absence of an order of suspension, sentence goes into immediate operation.—Ex parte Goucher, 103 Ala. 305.

4319 (4512) (4981) (4305) (754). **In case of misdemeanor judgment rendered, execution thereof suspended and defendant bailed or held in custody.**—When such question is reserved in case of a misdemeanor, and it shall be made known to the court that the defendant desires to take an appeal to the supreme court, judgment must be rendered on the conviction, but the execution thereof must

be suspended pending the appeal. In such case the defendant may give bail, with sufficient sureties, conditioned that he will appear and abide the judgment; and failing to give such bail, he must be committed to jail, but may give such bail at any time pending the appeal.

What will discharge bail and how pleaded.—Williams's case, 55 Ala. 71.

4320. Defendant may confess judgment for fine and costs with stay of execution, etc.—In the case of a misdemeanor the defendant may confess judgment, with sufficient sureties, for a fine and costs as if no appeal was taken, but execution thereon must be suspended pending the appeal; and if the judgment of conviction is reversed the confessed judgment is thereby vacated; but if the judgment of conviction is affirmed, or the appeal is dismissed, execution on such confessed judgment may issue at once. Such confession of judgment does not avoid the necessity for giving bail as provided in the preceding section.

Ex parte Newton, 94 Ala. 431; Burk's case, 71 Ala. 377.

4321 (4513) (4982) (4306) (755). **Effect of undertaking when appeal not sustained.**—When the defendant in a case of misdemeanor is sentenced to hard labor or imprisonment and gives bail pending the appeal, and the judgment of conviction is affirmed or the appeal is dismissed, he is bound by the undertaking of bail to surrender himself to the sheriff, at the county jail, within fifteen days from the date of such affirmance or dismissal; and if he shall fail to do so, the sheriff must indorse the bail-bond forfeited and a writ of arrest must be issued by the clerk, and if not executed another must be issued, and so on until the judgment has been executed. If the defendant is taken on such writ, or if he shall surrender himself to the sheriff, the sentence must, without delay, be carried out as if no appeal had been taken.

4322. Effect when appeal sustained.—When the judgment of conviction is reversed and the cause remanded, such undertaking binds the defendant to appear from term to term until discharged by law and answer the charge, as in bail before conviction; but the defendant is not bound to appear before the trial-court pending his appeal.

4323 (4514) (4983) (4307) (756). **Proceedings on forfeited undertaking.**—When any undertaking of bail under the provisions of this article is forfeited by the failure of the defendant to surrender himself to the sheriff, or to appear and answer the charge, according to the terms and effect of such undertaking, the same proceedings must be had thereon as on the forfeiture of other undertakings of bail in the circuit or city court.

See sections 4374–4380, and citations thereto.

4324 (4510) (4979). **Transcript on appeal; when made out and forwarded.**—When the execution of the judgment has been suspended as provided in this article, or when an appeal is taken without such suspension, it is the duty of the clerk of the court in

which the case was tried to make out a full and accurate transcript of the record, attach his certificate thereto and transmit it to the clerk of the supreme court within twenty days thereafter; but when time is allowed for signing a bill of exceptions, such transcript must be made out and forwarded within twenty days from the signing of such bill of exceptions, or, if such bill is not signed and filed, such transcript must be made out and forwarded within twenty days after the expiration of the time so allowed.

Bolling's case, 78 Ala. 469; Ex parte Cameron, 81 Ala. 87.

4325. What transcript need not contain.—Such transcript need not contain mere orders of continuance, nor the organization of the grand jury which found the indictment, nor the venire for any grand or petit jury, nor the organization of regular juries for the week or term at which the case was tried, unless some question thereon was raised before the trial-court; but, in the absence of any such question, such proceedings are, upon appeal, presumed to have been regular and legal.

4326. Defendant may dismiss his appeal in trial-court; exception.—At any time before the transcript has been forwarded to the clerk of the supreme court, the defendant may dismiss his appeal, by filing, in the office of the clerk of the court in which the case was tried, a statement in writing to that effect, signed by himself or his attorney of record; and the clerk must enter the fact and date of such dismissal upon the margin of the record of the judgment. If the judgment has been suspended, such dismissal shall terminate the suspension and put the judgment into operation and the same must be executed in all respects as if the appeal had been dismissed by the supreme court. For such costs as may have accrued upon the appeal, the clerk may issue execution against the defendant, in favor of the state. But if sentence of death has been pronounced, such dismissal must be made at least ten days before the day appointed for the execution of the sentence.

ARTICLE 2.

WRIT OF ERROR.

4327 (4516) (4984). **By whom and when granted.**—A writ of error on any judgment rendered in a criminal case may issue on an order to that effect by any one of the judges of the supreme court in vacation, or by the supreme court in term time, addressed to the clerk of the court in which the judgment was rendered; but such writ must only be granted on some error of law apparent on the transcript of the record.

Formerly, when no question of law had been reserved, revision of judgment could be obtained only by writ of error.—Ex parte Knight, 61 Ala. 382; Taylor's case, 112 Ala. 69.

4328 (4517) (4985). **Transcript, etc., made out and delivered to defendant.**—On the filing of such order with the clerk of the court in which the judgment was rendered, such clerk must give the party filing it a certificate of the filing thereof; must make out a writ of error, and a transcript of the record and proceedings had in the cause; attach his certificate, and the writ of error, to such transcript, and deliver the same, on demand, to the party suing out the writ, or to his attorney.

4329 (4518) (4986). **Order granting writ entered on minutes; writ prosecuted to return term, else dismissed.**—When a writ of error is awarded by a judge of the supreme court in vacation, such judge must cause an entry of such order to be made on the minutes of the court at its next term; and if any writ of error is not prosecuted to the term to which it is returnable, it must be dismissed, and no writ of error afterwards allowed.

4330 (4519) (4987). **Execution of sentence suspended, etc.**—If the defendant is in the custody of the sheriff, and the order allowing the writ directs a stay of proceedings on the judgment, the sheriff must, on being served with the clerk's certificate that the order has been filed, and with a copy of the order, keep and detain the defendant in his custody, without executing the sentence which may have been passed on his conviction, to abide the judgment that may be rendered on the writ of error.

4331 (4520) (4988). **In case of misdemeanor, defendant bailed.** If the conviction is for an offense which is punishable by a fine, or by imprisonment in the county jail, or by hard labor for the county, the judge or court awarding the writ must also direct the clerk of the court in which the conviction was had to admit the defendant to bail in a sum to be prescribed by such judge or court, with sufficient sureties, conditioned for his appearance at the next term of the court in which the conviction was had, to abide such judgment as may be rendered on the writ of error.

4332 (4521) (4989). **Proceedings on forfeiture of undertaking; writ of arrest.**—If the defendant fails to appear according to the undertaking, a writ of arrest must be issued, and the same proceedings be thereon had as are prescribed by sections 4321 (4513) and 4322; and the same proceedings must be had on the forfeited undertaking as on the forfeiture of other undertakings of bail in said court.

ARTICLE 3.

CONSIDERATION; AFFIRMANCE; REVERSAL.

4333 (4509) (4990). **Assignment or joinder of error unnecessary; duty of court.**—In cases taken to the supreme court under the provisions of this chapter, no assignment of errors, or joinder in errors is necessary; but the court must consider all questions appar-

ent on the record or reserved by bill of exceptions, and must render such judgment as the law demands. But the judgment of conviction must not be reversed because of error in the record, when the court is satisfied that no injury resulted therefrom to the defendant.

Though not required, yet a brief would aid the court.—Robinson's case, 46 Ala. 10; Williams's case, 47 Ala. 659. See Hunter's case, 48 Ala. 272. Court must look to whole record.—Ex parte Whitaker, 43 Ala. 323; Williams's case, 47 Ala. 659; Foster's case, 39 Ala. 229. See Brazier's case, 44 Ala. 387. In any case, if errors apparent on the record are injurious to accused, cause will be reversed.—Williams's case, 47 Ala. 659. Ex parte Knight, 61 Ala. 483. Formerly the doctrine of error without injury was not applied in criminal cases. Pelham's case, 89 Ala. 28; Maxwell's case, 89 Ala. 150; Marks's case, 87 Ala. 99.

4334 (4522) (4991). **Affirmance of judgment.**—If the judgment is affirmed, or the appeal is dismissed, the supreme court must direct the sentence to be executed, and, if the day appointed for the execution of the sentence has passed, must specify a day for the execution of the sentence; and the judgment and sentence must be executed accordingly.

4335 (4523) (4992). **Reversal of judgment.**—If the judgment is reversed, the supreme court may order a new trial, or that the defendant be discharged, or that he be held in custody until discharged by due course of law, or make such other order as the case may require; and if the defendant is ordered to be discharged, no forfeiture can be taken on his undertaking of bail.

Settled law of this state, that on reversal of judgment, or new trial granted, defendant may be tried again.—Turner's case, 40 Ala. 21; Jeffries's case, Ib. 381; Waller's case, Ib. 325; Cobia's case, 16 Ala. 781; Slack's case, 6 Ala. 676; Hughes's case, 2 Ala. 102. Ex parte Newton, 94 Ala. 431; Burk's case, 71 Ala. 377. Appellate court will not correct error and affirm judgment, except as to matter of costs, even on agreement of all parties.—Herrington's case, 87 Ala. 1; Zaner's case, 90 Ala. 657; Johnson's case, 94 Ala. 35. See circuit-court rule 31 and citations thereto, Vol. I., p. 1200.

CHAPTER 127.

ARSON 4336-4341.

4336 (3780) (4346) (3697) (151). **Arson in the first degree.** Any person, who willfully sets fire to, or burns, any steamboat or vessel in which there is at the time any human being, or any prison or jail, or any other house or building which is occupied by a person lodged therein, or any inhabited dwelling-house, or any house adjoining such dwelling-house, whether there is at the time in such dwelling-house any human being or not, is guilty of arson in the first degree, and must, on conviction, be punished at the discretion of the jury, by death, or by imprisonment in the penitentiary for not less than ten years. (Form 6.)

A building built for and once used as a dwelling, but for a long time abandoned as a dwelling, and used only as a cotton-house, is not a dwelling in the meaning of the statute.—Henderson's case, 105 Ala. 82. **Curtilage defined:** A barn which only opens into a yard, which includes dwelling, is

"within curtilage of dwelling."—McKee's case, 82 Ala. 32. **Malice is a necessary ingredient** of the offense; the burning must be malicious and intentional.—Heard's case, 81 Ala. 55. If a man burns his own house, or procures another so to do, neither is guilty of arson, though might be if contiguous to other buildings, or of other offenses.—Heard's case, 81 Ala. 55. Evidence of malice toward another party than the one laid in the indictment is inadmissible.—Ib. The **setting fire to, or burning,** must be actual burning of the house or some part thereof, within the meaning of the word "burn," at common law. Graham's case, 40 Ala. 659. Setting fire to one house with the intent to communicate to another deemed a burning of the latter.—Grimes's case, 63 Ala. 166. Also by placing matches with unginned cotton, with intention to have matches ignited by handling of the cotton.—Overstreet's case, 46 Ala. 30. Setting fire to a jail to burn a hole to escape, is sufficient.—Luke's case, 49 Ala. 30. Lockett's case, 63 Ala. 5. Indictments under which they are held, best evidence of the charge against them, and of their intent in setting fire to jail. Luke's case, 49 Ala. 30. When one may be guilty, though he did not personally set fire to the house or "assist" any other person in so doing.—Hughes's case, 75 Ala. 31. The act must be willful; no negligence or mischance can make one guilty of arson.—Pairo's case, 49 Ala. 27. **Corpus delicti:** Proof tending to show burning by extraneous human agency sufficient.—Stone's case, 105 Ala. 60. Defined: Not a mere burning, but must be willful and criminal; the sufficiency of the proof a question for the jury and not for the court, though the court should pass on a fact as to prima facie showing that offense was committed.—Winslow's case, 76 Ala. 42. The proof of a charge consists in two distinct propositions: (1) The corpus delicti; (2) The identity of the defendant.—Ib. Confessions alone, without corpus delicti, will not support conviction.—Ib. Witness may testify to similarity of defendant's tracks to those found at scene of action.—James's case, 104 Ala. 20. And that pieces of jug found in the debris appeared to be burned.—Ib. **Venue:** Where venue not proved, defendant entitled to general charge.—Stone's case, 105 Ala. 60. But the question must be raised in the lower court.—Henderson's case, 105 Ala. 84. **Indictment:** To burn an "inhabited dwelling-house" is arson in the first degree; that a human being was in it is surplusage.—Paine's case, 89 Ala. 26. An indictment which alleges the burning of a "building used as a prison" is sufficient; that a human being was in it is surplusage.—Childress's case, 86 Ala. 77. **Indictment in Code form sufficient.**—Sand's case, 80 Ala. 201; Boles's case, 46 Ala. 207; Miller's case, 45 Ala. 24. Should aver the ownership.—Martha's case, 26 Ala. 72; Miller's case, 45 Ala. 24; Davis's case, 52 Ala. 357; Boles's case, 46 Ala. 204. Unless it is a public building; what sufficient averment of public building.—Lockett's case, 63 Ala. 5. Different house and different ownership may be alleged in different counts.—Miller's case, 45 Ala. 24; Martha's case, 26 Ala. 72. **Ownership:** The allegation "the jail of Wilcox county" is sufficient as to ownership, as the courts judicially know the jails are the property of the respective counties.—Sand's case, 80 Ala. 201. The ownership may be alleged disjunctively, in A., B., or C., and if the proof shows it to be joint it will support verdict.—Brown's case, 79 Ala. 51. That owner of building burned was one of the jury commission without other proof of illegal acts, is no ground to change venue or quash indictment.—Prater's case, 107 Ala. 26. Ownership of corn-crib containing corn on husband's land may be laid in wife, if she built it in absence of husband.—May's case, 85 Ala. 14. The averment that the owner of building is unknown need not be proved.—Childress's case, 86 Ala. 77. For arson in the first degree the jury may impose imprisonment for life.—Paine's case, 89 Ala. 26. Ownership sufficiently laid in a servant in possession, dwelling in the house under contract to do so.—Davis's case, 52 Ala. 357. Indictment intending to charge arson in first or second degree, when good only in third degree.—Brown's cases, 52 Ala. 345; Cheatham's cases, 59 Ala. 40. Ownership properly laid in a co-tenant in possession.—Adams's case, 62 Ala. 177. **Evidence:** Evidence that a jug containing oil found near burnt building was formerly in possession of the defendant's husband is admissible.—Thomas's case, 107 Ala. 13. It is not admissible to show that defendant has character of being afraid to go out at night.—Ib. Witness may testify to good character, though at the time does not live in the same neighborhood.—Prater's case, 107 Ala. 26. To show motive, the state of feeling, and relation between the defendant and injured party admissible.—Prater's case, 107 Ala. 26; Long's case, 86 Ala. 36; Winslow's case, 76 Ala. 42. A divorced wife is a competent witness against husband as to matters after divorce, but not before.—Long's case, 86 Ala. 36. Where A. and B. confessed to crime in presence of each other, evidence of motive on part of one admissible against both.—Stone's case, 105 Ala. 60. Failure to prove motive no ground for reasonable doubt.—Ib. **Confessions:** Confessions made to sheriff while in custody, if voluntary, are admissible.—Sand's case, 80 Ala. 201. Confessions obtained by artifice of detective may be admissible. Stone's case, 105 Ala. 60. Admissibility of testimony solely questions for the court.—Long's case, 86 Ala. 36. Declaration by defendant that he had pre-

viously attempted to burn the house; admissible.—McSwean's case, Ala. (21 So. 211). Ownership must be proved as laid.—Martha's case, 26 Ala. 72; Graham's case, 40 Ala. 659. What sufficient prima facie proof of corpus delicti to render defendant's confession admissible.—Winslow's case, 76 Ala. 42. Hostility and other circumstances admissible to show intent.—Hind's case, 55 Ala. 145; Overstreet's case, 46 Ala. 30; Balaam's case, 17 Ala. 451. Proof of collateral fact to show motive.—Winslow's case, 76 Ala. 42. Previous request by defendant of witness to burn the house, admissible.—Martin's case, 28 Ala. 71. But evidence that another house belonging to prosecutor was subsequently burned, inadmissible.—Brock's case, 26 Ala. 104. Admissibility of promises and threats made by a third person to state witness to leave the state; evidence connecting defendant.—Martin's case, 28 Ala. 71. Evidence under indictment for arson in third degree as to contents of building admissible. Brown's case, 52 Ala. 345. **Verdict** for arson in first degree, need not state the degree.—Davis's case, 52 Ala. 357.

4337 (3781) (4347) (3698) (152). **Arson in the second degree.** Any person, who willfully sets fire to, or burns any church, meeting-house, court-house, town-house, college, academy, jail, or other building erected for public use, or any banking-house, warehouse, cotton-house, gin-house, store, manufactory, or mill, which, with the property therein contained, is of the value of five hundred dollars or more, or any car, car-shed, cotton-house, or cotton-pen containing cotton, or corn-crib, or corn-pen containing corn, or any barn, stable, shop, or office, within the curtilage of any dwelling-house, or other building by the burning whereof any building hereinbefore specified in this section is burned, or who willfully sets fire to, or burns any uninhabited dwelling-house, or any steamboat or vessel in which there is at the time no human being, is guilty of arson in the second degree, and must, on conviction, be punished by imprisonment in the penitentiary for not less than two, nor more than ten years. (Form 7.)

There can be no conviction under this section for **burning one's own house,** or of another who burned it at the owner's request, to get the insurance on it. Heard's case, 81 Ala. 55. **Curtilage defined.**—Cook's case, 83 Ala. 62. A barn which only opens into the yard in which dwelling is situated is within the curtilage of the dwelling-house.—Washington's case, 82 Ala. 31. **A corn-crib containing corn** is equivalent to corn-pen containing corn, and is sufficient averment.—Cook's case, 83 Ala. 62. **The degree** of arson which the law ascribes to the burning of a gin-house **is determined by its value**—if over $500, is arson in second degree; if under, the third.—James's case, 104 Ala. 20. Under this section the indictment must aver that the gin-house was of the value of more than $500.—Ib. **Counts for arson in second and third degree cannot be joined,** and in such case a general verdict of guilty will be arrested. James's case, 104 Ala. 20. **To burn a cotton-house containing cotton** is arson in the second degree irrespective of value, and therefore averments as to value are surplusage, and need not be proved.—Henderson's case, 105 Ala. 82. Ownership of the cotton must be alleged; "containing cotton of M. B.," insufficient. Smoke's case, 86 Ala. 143. See note to preceding section.

4338 (3782). **Attempts to commit arson.**—An attempt to commit arson, in either the first or second degree, is a felony punishable, on conviction, by imprisonment in the penitentiary for not less than two, nor more than five years.

Sufficiency of indictment charging attempt to commit an offense.—Jackson's case, 91 Ala. 55.

4339 (3783). **Same; sufficiency of indictment.**—An indictment for an attempt to commit arson is sufficient, if it alleges that the person charged "did attempt to willfully set fire to or burn a steamboat or vessel in which there was at the time a human being," or "did attempt to willfully set fire to or burn a church or meeting-

house, erected for public use," as the case may be, without alleging the particular acts constituting the attempt.

4340 (3784) (4348) (3699) (153). **Arson in third degree.**—Any person, who willfully sets fire to, or burns any house, building, boat, or vessel, or any bridge, causeway, turnpike-gate, or toll-gate, by law erected or authorized, under such circumstances as do not constitute arson in the first or second degree, is guilty of arson in the third degree, and must, on conviction, be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months, and may also be fined not more than two thousand dollars, at the discretion of the jury. (Form 8.)

See note to section 4336. An indictment which alleges that defendant willfully set fire to and burned a gin-house without alleging value is good under this section, but not for arson in the second degree.—James's case, 104 Ala. 20. An indictment which charges that the defendant "willfully set fire to and burned a corn-crib or corn-pen, under circumstances not constituting arson in first or second degree" is good as to arson in third degree.—Leonard's case, 96 Ala. 108. The only punishment the jury can impose for arson in the third degree is fine not to exceed $2,000.—Leonard's case, 96 Ala. 108.

4341 (3785) (4349) (3700) (154). **Burning insured house, vessel, etc., or casting away or destroying boat or vessel.**—Any person, who, with intent to charge, injure, or defraud the insurer, willfully burns, or, with intent to burn, sets fire to any building or property which is at the time insured against fire; or who willfully burns, or sets fire to, with intent to burn, or sinks, casts away, or otherwise destroys any boat, ship, or vessel, with intent to charge, injure, or defraud the owner of such boat, ship, or vessel, or of any property on board of the same, or the insurer of such boat, vessel, or property; or any person who attempts to commit the offense defined by this section, must, on conviction, be punished by imprisonment in the county jail, or hard labor for the county, for not more than twelve months; and may also be fined not more than two thousand dollars, at the discretion of the jury.

The offense under this section is separate and distinct from arson in any degree, under the statute.—Heard's case, 81 Ala. 55. Proof of facts to constitute this offense will not support verdict under indictment charging arson in any degree.—Ib. The indictment must aver the statutory constituents—insurance against fire and the intent to charge, injure or defraud the insurer.—Ib.; Martin's case, 29 Ala. 30; s. c., 28 Ala. 71.

CHAPTER 128.

ASSAULTS. 4342-4347.

4342. Presenting firearms at another.—Any person who presents at another person any gun, pistol, or other firearm, whether loaded or unloaded, must, on conviction, be fined not less than ten nor more than one hundred dollars. Feb. 28, 1889, p. 67.

Not unconstitutional; not intended to interfere with the right of self-defense.—Davenport's case, 112 Ala. 49. If weapon discharged and death results, the **killing cannot be less than involuntary manslaughter.**—Johnson's case, 94 Ala. 35; Sanders's case, 105 Ala. 4.

4343 (3747) (4318). **Punishment of assaults, and assaults and batteries.**—Any person, who commits an assault, or an assault and battery on another, must, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. (Form 9.)

To constitute an assault, there must be an attempt, though interrupted, to inflict personal violence.—Blackwell's case, 9 Ala. 79; Johnson's case, 35 Ala. 363; Shaw's case, 18 Ala. 547. An intentional attempt to strike, within striking distance.—Lane's case, 85 Ala. 11. Held, an assault to cause a person to give up his gun through fear of bodily harm.—Balkum's case, 40 Ala. 671. Also raising a stick near enough and intending to strike, causing the party to strike in self-defense.—Johnson's case, 35 Ala. 363. Also to attempt to strike in striking distance, or to shoot in shooting distance.—Gray's case, 63 Ala. 66. **An assault and battery,** to unlawfully take and detain another without his consent.—Long v. Rogers, 17 Ala. 540. Also for hirer to chastise convict. Prewitt's case, 51 Ala. 33. Also to maltreat a convict.—Sanders's case, 55 Ala. 43. Also for husband to whip his wife.—Robbins's case, 20 Ala. 36. Husband no authority to inflict moderate correction on his wife; the authority for "wife-whipping" is a relic of barbarism.—Fulgham's case, 46 Ala. 143, citing Turner v. Turner, 44 Ala. 437; Goodrich v. Goodrich, Ib. 670. **To constitute assault with gun or pistol,** it must be presented within a dangerous distance. Tarver's case, 43 Ala. 354; Lawson's case, 30 Ala. 14. A party may **resist an officer,** and use force sufficient only to prevent levying process on his own property when process is against third party.—Smith's case, 105 Ala. 136. An **officer is guilty of an assault** if he strikes A. while attempting to levy process against B. on A.'s property.—Smith's case, 105 Ala. 136. Party has right to **retake his property unlawfully held;** but if he do so in an angry manner, and use more force than necessary, he is guilty of assault.—Bonner's case, 97 Ala. 47. **Indictment** may charge in one count simple assault, and in another assault with weapon.—Ib. **The wife may be compelled to testify against the husband** for assault committed on her by him.—Johnson's case, 94 Ala. 53. In **prosecution against policeman for assault** in making arrest, the judgment in police court in case against party arrested, is not admissible. Patterson's case, 91 Ala. 58; Haas v. Taylor, 80 Ala. 459. **Policeman** in making arrest **should only use such force as is necessary** to protect himself or parties assisting in the arrest.—Patterson's case, 91 Ala. 58. **A school-teacher,** or one standing "in loco parentis," has the right, in the exercise of sound discretion, to moderately chastise pupil under his charge.—Boyd's case, 88 Ala. 169; McCormack's case, 102 Ala. 156; Dean's case, 89 Ala. 46. But **teacher or parent cannot deal brutally with children,** so as to endanger life, or inflict cruel punishment.—Boyd's case, 88 Ala. 169; Dean's case, 89 Ala. 46. A witness, not an expert, cannot give his opinion as to whether an injury is permanent.—Dean's case, 89 Ala. 46. **Neither mistake of identity of person assaulted or drunkenness** of accused **is any defense** for assault.—Carter's case, 87 Ala. 113. Though affidavit names no party assaulted, the information may supply it and there is no variance.—Little's case, 89 Ala. 99. **When two persons meet, mutually use insulting words, fight willingly, both are guilty of assault.**—Howell's case, 79 Ala. 283. **Party who uses first words of insult** cannot justify his subsequent assault, unless he withdraws from combat. Ib. **Party who merely answers a verbal insult with another** does not deprive himself of self-defense, unless he fights willingly.—Ib. **Pointing an unloaded gun** at another, though party does not know that it is not loaded, is not an assault.—Chapman's case, 78 Ala. 463. A charge "that the least touching of another person willfully" is a battery, is erroneous.—Alston's case, 109 Ala. 51. **Questions so framed that the answer may tend to criminate witness need not be answered.**—Ib. All parties are liable as accomplices for subsequent acts growing out of common design, but not for acts growing out of particular malice or design.—Ib. **Justice of the peace no jurisdiction** of assault with weapon, and a conviction by him is void.—Danzey's case, 68 Ala. 296. **No defense,** if person assaulted struck first blow, if retaliation disproportionate or excessive.—Mooney's case, 33 Ala. 419; Riddle's case, 49 Ala. 389. Self-defense cannot be invoked if accused provoked the difficulty.—Johnson's case, 69 Ala. 253; Page's case, Ib. 229. No excuse that person assaulted had possession, and refused to surrender defendant's property, which had been stolen.—Hendrix's case, 50 Ala. 148. Violent character of person assaulted inadmissible.—Brown's case, 74 Ala. 42. Husband may prove wife's conduct **in mitigation.**—Robbins's case, 20 Ala. 36. A pending civil action may be proved in mitigation.—Autery's case, 1 Stew. 399. Also remark of the accused at the time, as part of **res gestæ.**—Riddle's case, 49 Ala. 389; Blackwell's case, 9 Ala.

79; Johnson's case, 35 Ala. 363. An owner of goods may, after notice, employ **reasonable force** to prevent an unlawful levy.—Johnson's case, 12 Ala. 840. **As to what circumstances inadmissible to justify or mitigate.**—Rosenbaum's case, 33 Ala. 354; Ward's case, 28 Ala. 53; Prewitt's case, 51 Ala. 33; Hendrix's case, 50 Ala. 148. Code form of **indictment** sufficient.—Thompson's case, 25 Ala. 41. Means used may be alleged in alternative.—Murdock's case, 65 Ala. 520. Specific intent or circumstances of aggravation may be alleged.—Ib. 520. Allegation of assault with a weapon must be proved, else **variance** is fatal. Johnson's case, 35 Ala. 363; Walker's case, 73 Ala. 17. Indictment charging assault with both a stick and a knife; when prosecutor need not **elect.**—Johnson's case, 35 Ala. 363. Conviction for assault and battery may be had under indictment for rape.—Richardson's case, 54 Ala. 158. **Voluntary drunkenness can never justify** an assault and battery.—Englehardt's case, 88 Ala. 100.

4344 (3748) (4315) (3672) (134). **Assault and battery with cowhide, etc., having pistol, etc., to intimidate.**—Any person, who assaults and beats another with a cowhide, stick, or whip, having in his possession at the time a pistol, or other deadly weapon, with intent to intimidate and prevent the person assaulted from defending himself, must, on conviction, at the discretion of the jury, be fined not more than two thousand dollars, or be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months. (Form 10.)

When indictment insufficient for this offense, held good for a simple assault and battery.—Higginbotham's case, 50 Ala. 133.

4345 (3749) (4900) (4198) (646). **Evidence of abusive words to extenuate or justify.**—On the trial of any person for an assault, an assault and battery, or an affray, he may give in evidence any opprobrious words or abusive language used by the person assaulted or beaten at or near the time of the assault or affray; and such evidence shall be good in extenuation or justification, as the jury may determine.

Intended as a shield and not as a sword.—Brown's case, 74 Ala. 42. Where there is evidence tending to show that **assault was provoked by opprobrious words,** it is error for court to refuse to instruct jury that such words may justify or extenuate the offense.—Spigner's case, 103 Ala. 30. Where the assault is admitted, and accused relies on opprobrious words for justification, the burden to show this is on him, and the court in charge may assume the assault. Ib. The statute applies only to assaults, or assaults and batteries, not to felonies or homicides.—Prior's case, 77 Ala. 56. **Violent character of person assaulted** not admissible when defendant was the aggressor.—Brown's case, 74 Ala. 42.

4346 (3751) (4314) (3670) (128). **What assaults or attempts felonies.**—Any person, who commits an assault on another, with intent to murder, maim, rob, ravish, or commit the crime against nature, or who attempts to poison any human being, or to commit murder by any means not amounting to an assault, must, on conviction, be punished by imprisonment in the penitentiary for not less than two, nor more than twenty years. (Forms 12, 13, 14, 15.)

Assault to murder, is with the intent, unlawfully and maliciously, to kill the *person assaulted.*—Washington's case, 53 Ala. 29; Burns's case, 8 Ala. 313; Moore's case, 18 Ala. 532; Tarver's case, 43 Ala. 354; Ogletree's case, 28 Ala. 693; Meredith's case, 60 Ala. 441; Simpson's case, 59 Ala. 1. Is a common-law offense, statute merely changing the punishment.—Meredith's case, 60 Ala. 441. *Attempt* not equivalent to *intent.*—Marshall's case, 14 Ala. 411. Intent to kill not equivalent to intent to murder.—Crawford's case, 86 Ala. 16; Williams's case, 77 Ala. 53. Party may be guilty without knowing the person assaulted. Washington's case, 53 Ala. 29. Need not be a specific intent, as contradistinguished from the intent to be implied by the jury from the attendant circumstances.—Meredith's case, 60 Ala. 441. **An intent to take life must be proved;**

but, like the malicious intent in murder, **may be inferred by the jury** from the use of a deadly weapon, the character of the assault, and other attendant circumstances.—Walls's case, 90 Ala. 618 (qualifying Smith's case, 88 Ala. 23); Moore's case, 18 Ala. 532; Allen's case, 52 Ala. 391; Meredith's case, 60 Ala. 441; Lane's case, 85 Ala. 11; Jolly's case, 94 Ala. 19; Jackson's case, 94 Ala. 85; Jones's case, 96 Ala. 101; Ellis's case, 105 Ala. 72. Hence **charges requiring** an acquittal unless the jury find **a specific intent** to murder, are misleading and **properly refused.**—Cases last cited. Where there is evidence of an assault upon the particular person named in the indictment, the determination of guilt or innocence of the felony necessitates the inquiry, whether, if death had ensued, the offense would have been murder in either degree.—McCormack's case, 102 Ala. 156; Lawrence's case, 84 Ala. 424; Smith's case, 83 Ala. 26; Meredith's case, 60 Ala. 441. That the offense would have been murder had death ensued, is not sufficient evidence of the intent when the injury is inflicted on a person not intended.—Moore's case, 18 Ala. 532; McCormack's case, 102 Ala. 156. **The means to accomplish the intent need not exist;** as the absence of a cap from a gun would not matter, if the accused supposed it was on the gun.—Mullen's case, 45 Ala. 43. **Presenting an unloaded gun,** knowing it to be unloaded, is not an assault.—Chapman's case, 78 Ala. 463. **The facts must raise presumption of intent to murder.**—Morgan's case, 33 Ala. 413; Horn's case, 98 Ala. 23. The **intent is a question for the jury.**—Morgan's case, 33 Ala. 413; Simpson's case, 59 Ala. 1; Washington's case, 63 Ala. 135. Evidence of malice and intent.—Ogletree's case, 28 Ala. 693; Cabbell's case, 46 Ala. 195; Tarver's case, 43 Ala. 354; Allen's case, 52 Ala. 391; Moore's case, 18 Ala. 532; Simpson's case, 59 Ala. 1; Ross's case, 62 Ala. 224; Gray's case, 63 Ala. 66; Meredith's case, 60 Ala. 441; Crawford's case, 86 Ala. 16. **Deprived of felonious character** under same provocation as homicide; doctrine of **freedom from fault and of retreat** the same.—Ellis's case, 105 Ala. 72; Williams's case, 103 Ala. 33; McCormack's case, 102 Ala. 156; Gunter's case, 111 Ala. 23. **Onus on defendant** to show there was no reasonable mode of escape; **onus on state** to show fault in bringing on the difficulty.—Cleveland's case, 86 Ala. 1; Gibson's case, 89 Ala. 121; Keith's case, 97 Ala. 32; Holmes's case, 100 Ala. 80; McCormack's case, 102 Ala. 156; Henson's case, 112 Ala. 41; s. c., 22 So. 127. The discharge of a loaded gun at another, within carrying distance, if unexplained, raises the **presumption of malice.**—Crawford's case, 86 Ala. 16; Williams's case, 77 Ala. 53. What necessary to justify use of deadly weapon in resistance of assault.—Jackson's case, 94 Ala. 85. **When malice presumed** from the use of a deadly weapon.—Williams's case, 77 Ala. 53; Crawford's case, 86 Ala. 16; Jolly's case, 94 Ala. 19. **Sudden passion** from an immediate insult is not enough to repel the imputation of malice.—Lane's case, 85 Ala. 11. **Aiding and abetting,** and encouraging a mob by words to commit this offense; must be shown that the mob heard the words.—Cabbell's case, 46 Ala. 195. Words were addressed to or heard by some of the persons composing the mob.—Cabbell's case, 46 Ala. 195. **Conspiracy:** Each co-conspirator is equally responsible for everything which may consequently and proximately result from their unlawful purpose.—Tanner's case, 92 Ala. 1; Jolly's case, 94 Ala. 19; Martin's case, 89 Ala. 115; Elmore's case, 110 Ala. 63. If defendant himself made the assault, proof of the conspiracy is not necessary.—Jolly's case, 94 Ala. 19. Charge predicating guilt on proof that defendant was present ready to aid and abet, without proof of a conspiracy, is error.—Elmore's case, 110 Ala. 63. **Abusive words or threats** employed by accused against person assaulted, prior or subsequent to difficulty, admissible to show hostile intent.—Wims's case, 90 Ala. 623; Horn's case, 98 Ala. 23; Lawrence's case, 84 Ala. 424; Drake's case, 110 Ala. 9; Elmore's case, 110 Ala. 63; Walker's case, 85 Ala. 7; Henderson's case, 70 Ala. 29. The fact that defendant armed himself for the purpose of the difficulty is material and relevant.—Ellis's case, 105 Ala. 72. **Attempt to poison;** threats of accused to kill mutual paramour of himself and person assaulted, made at same time as threats against person assaulted, admissible. Shackleford's case, 79 Ala. 26. **Attempt to murder wife by drowning;** evidence tending to show relations existing between accused and his wife admissible.—Smith's case, 92 Ala. 30. **Indictment** charging assault to murder **includes the lesser degrees of** assault; hence charges requiring an acquittal on failure to prove malice are properly refused.—Jones's case, 79 Ala. 23; Horn's case, 98 Ala. 23. Includes, **also, an attempt** to commit an assault, and charge ignoring this feature is properly refused.—White's case, 107 Ala. 132. **Election:** Where defendant fired three shots in quick succession at the person assaulted, state not required to elect.—Ellis's case, 105 Ala. 72. When interval between two shots too great to constitute one and the same transaction, state required to elect.—Williams's case, 77 Ala. 53. Where defendant assaulted different persons as part of same transaction, acquittal of one no bar to prosecution for the other.—Gunter's case, 109 Ala. 23. Indictment may, in different counts, allege assault on different persons; if evidence discloses two distinct acts, state required to elect.—Tanner's case, 92 Ala. 1. **Drunkenness:** Not

available in defense unless the accused was so drunk as to be incapable of forming an intent to take life.—Walker's case, 85 Ala. 7; Englehardt's case, 88 Ala. 100. While the fact of excessive drunkenness may reduce the grade of crime, voluntary drunkenness can never justify an assault.—Englehardt's case, 88 Ala. 100. That accused was drunk from four to seven when offense committed, "falls far short" of showing incapacity to form intent to take life.—Walker's case, 85 Ala. 7. Testimony that shooting "was accidental" properly excluded as a conclusion.—Gunter's case, 111 Ala. 23. "A man's house is regarded in law as his **castle**, his place of refuge," and there is no duty to retreat therefrom.—Christian's case, 96 Ala. 89; Lee's case, 92 Ala. 15; Brinkley's case, 89 Ala. 34; Naugher's case, 105 Ala. 26. The **indictment**, when defective, yet good for simple assault.—Wood's case, 50 Ala. 144; Bullock's case, 13 Ala. 413. Formerly held necessary to allege the facts which constitute the offense. (Clay's Digest, 442, §26); Beasley's case, 18 Ala. 539; Trexler's case, 19 Ala. 22. Where a weapon is alleged, **a plea of guilty** of simple assault is admission of assault with the weapon, without the intent.—Adams's case, 48 Ala. 421. And if the intent to murder is not proved, **verdict** may be for simple assault.—Turbeville's case, 40 Ala. 715; Mooney's case, 33 Ala. 419. When held to be for simple assault.—Burns's case, 8 Ala. 313. **Assault to maim**; the **intent**, whether deliberate or formed on the instant, whether specific or general, if directed against the person assaulted, is the criminal intent meant in the statute. Allen's case, 52 Ala. 393. **Indictment**, when good only for simple assault. Murdock's case, 65 Ala. 520. An **attempt** should be accompanied by an intent to maim.—Allen's case, 52 Ala. 393. **Assault to ravish** must be forcible attempt to cohabit against female's consent.—Lewis's case, 30 Ala. 54; Jones's case, 90 Ala. 628; Toulet's case, 100 Ala. 72; Norris's case, 87 Ala. 85. **Force**, actual or constructive, necessary, even (under this section) in case of child under ten.—Toulet's case, 100 Ala. 72. **Intent** to gratify desire against consent of female must be shown beyond reasonable doubt.—Jones's case, 90 Ala. 628. Where the accused put his arms around the prosecutrix, forcibly held and pressed her, making indecent proposals, and only released her on her threats to call assistance, conviction sustained.—Norris's case, 87 Ala. 85. An intent to do a thing implies a purpose only, while an attempt to do a thing implies both a purpose and an actual effort to carry that purpose into execution.—Witherby's case, 39 Ala. 703, citing on this point Prince's case, 35 Ala. 367. Hence, an "assault with intent to commit a rape," is of itself an attempt to commit a rape.—Ib. 702. Indecent advancement or importunity not sufficient, unless accompanied by acts evidencing intent, and creating terror; subsequent abandonment of purpose, no excuse.—Lewis's case, 35 Ala. 380. The mere fact of **complaint** admissible.—Scott's case, 48 Ala. 420. See note to section 5444. Prosecutrix cannot give opinion, and state that defendant "attempted to ravish her, but did not accomplish his purpose."—Scott's case, 48 Ala. 420. Physical inability of defendant may be considered.—Nugent's case, 18 Ala. 521. An indictment in Code form sufficient.—Bradford's case, 54 Ala. 230.

4347 (3752) (4599) (3901) (353). **Assaults to kill or maim and conspiracies by convicts.**—Any convict, who assaults an inspector of convicts, or an officer or other person having the charge of, or superintendence over convicts, with intent to kill or maim him, or conspires with any other person for the purpose of killing or maiming any such officer or person, must, on conviction thereof, if his former sentence was for life, suffer death; and, if his former sentence was for a term less than life, be imprisoned for an additional term, not less than five, nor more than twenty years.

CHAPTER 129.

BAIL.

ARTICLE 1.—DEFINITIONS. 4348, 4349.
2.—WHO MAY ADMIT TO, AND TAKE BAIL; PROCEEDINGS ON APPLICATION, AND REVISION BY SUPREME COURT. 4350–4356.
3.—WHEN BAIL ALLOWED. 4357–4360.
4.—FORM, QUALIFICATIONS, AND RETURN OF BAIL. 4361–4368.
5.—EFFECT OF UNDERTAKING, AND DISCHARGE OF BAIL. 4369–4373.
6.—FORFEITURE; PROCEEDINGS THEREON. 4374–4380.

ARTICLE 1.

DEFINITIONS.

4348 (4406) (4840) (4232) (681). **Admission to bail defined.** Admission to bail is the order of a competent court, magistrate, or officer, that the defendant be discharged from actual custody on bail.

Bail fixed by committing magistrate no bar to further arrest for same offense, nor is it available for accused after indictment.—Robinson's case, 108 Ala. 161; overruling Skelton's case, 104 Ala. 98.

4349 (4407) (4841) (4233) (682). **Taking of bail defined.**—The taking of bail consists in the acceptance by a competent court, magistrate, or officer, of sufficient bail for the appearance of the defendant according to the legal effect of his undertaking, or for the payment to the state of a certain specified sum if he does not appear.

In absence of statute authorizing it, an officer cannot delegate his power to admit to bail.—Butler v. Foster, 14 Ala. 323; Antonez's case, 26 Ala. 81. Nor can he receive or authorize a sum of money as substitute for bail.—Butler v. Foster, 14 Ala. 323.

ARTICLE 2.

WHO MAY ADMIT TO, AND TAKE BAIL; PROCEEDINGS ON APPLICATION, AND REVISION BY SUPREME COURT.

4350 (4408) (4830) (4157) (605). **Discharge on bail by sheriff or deputy for misdemeanor; minimum bail fifty dollars.**—If the offense charged in the indictment is a misdemeanor, the defendant must be discharged by the sheriff, or his deputy, on giving sufficient bail; but the amount of bail must in no case be less than fifty dollars.

In case of misdemeanor, bail is a matter of right and sheriff has no discretion if sufficient bail offered.—Hammon's case, 59 Ala. 164; Jones's case, 63 Ala. 161; Callahan's case, 69 Ala. 65; Taylor v. Smith, 104 Ala. 537. Sheriff refusing to take sufficient bail liable on his bond in damages to the defendant. Taylor v. Smith, 104 Ala. 537.

Feb. 28, 1887, p. 117.

4351 (4409, 4411) (4831, 4849) (4160, 4241) (608, 690). **How bail for felony fixed; taken by sheriff.**—When a bill of indictment is filed in court charging the defendant with a bailable felony, and the

defendant fails to give bail in open court, the judge of the court must forthwith indorse on such indictment the amount of bail to be required of the defendant; and, when an application for bail is made to any judge or chancellor in vacation, such judge or chancellor may fix the amount of bail; and the sheriff has authority, and it is his duty, to discharge such defendant in term time or vacation on his giving bail as required. But this section shall not have effect to prevent application for bail, or for reduction of bail, in any other manner provided by law.

4352. Amount of bail indorsed on writ of arrest.—When a writ of arrest is issued upon an indictment, the clerk issuing the writ must indorse thereon an order to the sheriff to take bail of the defendant in the amount fixed by the judge and indorsed by him on the indictment. Ib. 62.

Ex parte Robinson, 108 Ala. 161.

4353 (4410) (4832) (4161) (609). **When sheriff may discharge on bail for misdemeanor.**—If the indictment charges a misdemeanor, and the defendant is committed to jail for want of bail, the sheriff may, at any time, discharge him on his giving bail in the amount required.

See citations to section 4350.

4354 (4412) (4848) (4240) (689). **When probate judge may take bail.**—A judge of probate, within his county, has the same authority to admit to bail that is by law conferred on a chancellor or circuit judge to admit to bail in vacation.

Ex parte Keeling, 50 Ala. 474; Ex parte Ray, 45 Ala. 15; Hale's case, 24 Ala. 80.

4355 (4413) (4850) (4242) (691). **Only one application allowed; exceptions reserved and taken to supreme court.**—When an application for bail is made to a chancellor, or to any circuit or city court in term time, or to any circuit judge, city judge, or judge of probate in vacation, and is refused, no subsequent application can be made; but the evidence in such case may be set out on exceptions, and application made thereon to the supreme court.

If case heard before lower court on evidence, etc., defendant cannot claim another such hearing; only remedy to set out evidence on exceptions, and apply to supreme court.—Ex parte Carroll, 36 Ala. 300; Ex parte Campbell, 20 Ala. 89. If bail refused, he may petition supreme court for a revision.—Ex parte Croom, 19 Ala. 561. But unless lower court clearly erred, its decision permitted to stand.—Ex parte McAnally, 53 Ala. 496; Ex parte McCrary, 22 Ala. 65; Ex parte Weaver, 55 Ala. 250; Ex parte Allen, Ib. 258; Ex parte Nettles, 58 Ala. 268. The way to get the case heard before the supreme court. Ex parte Croom, 19 Ala. 561. Not a matter of right to withdraw application for bail; state has an interest in the hearing, if begun, and court may proceed to determine it.—Ex parte Campbell, 20 Ala. 89.

4356 (4414) (4851) (4243) (692). **How bail fixed and taken in such case; duty of sheriff.**—When an order is made by the supreme court admitting a defendant to bail, the order must fix the amount of bail required, and direct the same to be taken by the chancellor or judge to whom the primary application was made, or by the sheriff of the county in which the defendant is confined; and when such bail is ordered to be taken by a chancellor or judge the sheriff hav-

ing the custody of the defendant must carry him before such chancellor or judge for that purpose.

Order for bail is properly directed to the sheriff having the custody of the defendant, and bail is properly taken by such sheriff, though the prosecution be pending in another county and circuit.—Holcombe's case, 99 Ala. 185.

ARTICLE 3.

WHEN BAIL ALLOWED.

4357 (4415) (4842) (4234) (683). **When bail not allowed.**—A defendant cannot be admitted to bail when he is charged with an offense which may be punished by death, if the court or magistrate is of the opinion, on the evidence adduced, that he is guilty of the offense in the degree punished capitally; nor when he is charged with a personal injury on another which is likely to produce death, and which was committed under such circumstances as would constitute murder in the first degree if death should ensue.

The common-law rule of admitting to bail, and the constitution and statutes construed in connection therewith.—Ex parte Croom, 19 Ala. 561; Ex parte Bryant, 34 Ala. 270; Ex parte McAnally, 53 Ala. 496; Ex parte Mahone, 30 Ala. 49; Hammon's case, 59 Ala. 164. Rules in determining whether case bailable: (1) *May* the offense be punished capitally, not that it *must* be.—Ex parte McCrary, 22 Ala. 65; Ex parte McAnally, 53 Ala. 496. (2) If it may, and the proof is evident, or the presumption great of the defendant's guilt, bail should be denied.—Ib. 65; Ib. 495; Ex parte Mahone, 30 Ala. 49; Ex parte Banks, 28 Ala. 89; Ex parte Howard, 30 Ala. 43; Ex parte Bryant, 34 Ala. 270. (3) If a well-founded doubt exists as to defendant's guilt, the proof cannot be said to be evident, or the presumption great; and the accused is then entitled to bail as a matter of right.—Ex parte Bryant, 34 Ala. 270; Ex parte Banks, 28 Ala. 89; Ex parte Acree, 63 Ala. 234. (4) Accused must be presumed to be guilty in the highest degree, which presumption must be overcome by proof.—Ex parte Vaughan, 44 Ala. 417. (5) Bail may be denied whenever the judge would sustain a capital conviction by a jury on the same evidence.—Ex parte McAnally, 53 Ala. 496; Ex parte Nettles, 58 Ala. 268; Ex parte Brown, 65 Ala. 446; Ex parte Sloane, 95 Ala. 22. (6) Bail should be denied in assault with intent to murder, when wounded party in danger of dying within a year and a day. Ex parte Andrews, 19 Ala. 582. Pecuniary condition of defendant taken into account.—Ex parte Banks, 28 Ala. 89. A prisoner held under charge punished capitally is entitled to bail as matter of right, unless the proof is evident or presumption great.—Ex parte Sloane, 95 Ala. 22; Ex parte King, 86 Ala. 620; Ex parte Bonner, 100 Ala. 114; Richardson's case, 96 Ala. 110. It is also the rule that revisory courts will give much weight to judgment of lower court which saw the demeanor and could judge of the prejudice of the witnesses. Ex parte Sloane, 95 Ala. 22. On application for bail of prisoner who is under indictment for murder, the indictment makes a prima facie case for the state, and the burden is on the defense.—Ex parte Rhear, 77 Ala. 92. Evidence examined and held not sufficient to justify a denial of bail.—Ex parte King, 86 Ala. 620; Ex parte Dykes, 83 Ala. 114; Ex parte Hammock, 78 Ala. 414; Ex parte Bryant, 34 Ala. 270. When prisoner has been regularly committed and applies for bail on habeas corpus, the order of commitment is a prima facie case for state; but if state examines witnesses and they fail to make out a case, defendant should be discharged.—Ex parte Robinson, 86 Ala. 622.

4358 (4416) (4843) (4235) (684). **When matter of right.**—In all other cases than those above specified, the defendant is, before conviction, entitled to bail as a matter of right.

In case of misdemeanor.—Hammons's case, 59 Ala. 164; Callahan's case, 60 Ala. 65; Taylor v. Smith, 104 Ala. 537. In capital felonies "unless proof evident or presumption great."—Ex parte McAnally, 53 Ala. 496; Hammons's case, 59 Ala. 164. See also note to preceding section.

4359 (4417) (4844) (4236) (685). **When allowed in capital cases on two continuances by state.**—In cases punished capitally, the defendant is entitled to bail as a matter of right, when the state, after the finding of the indictment, has continued the case twice, without his consent, for the testimony of absent witnesses.

Under this section, the right to bail is confined to continuances "for the testimony of absent witnesses"; does not extend to continuances for other causes.—Ex parte Carroll, 36 Ala. 300.

4360 (4418) (4845) (4237) (686). **When dismissal of indictment taken as a continuance.**—In such case, if the indictment is dismissed, the defendant, on application for bail, is entitled to the benefit of any continuance had upon such indictment by the state for absent witnesses; and if another indictment is not found at the same court at which the former is dismissed, the order of dismissal is to be taken as a continuance by the state for absent witnesses.

ARTICLE 4.

FORM, QUALIFICATIONS, AND RETURN OF BAIL.

4361 (4419) (4846) (4238) (687). **Bail in open court; form of entry.**—When bail is taken in open court, it must be entered on the minutes, and may be as follows:

"The State } Came into court the said A. B., and also C. D. and
vs. } E. F., and agreed to pay the State of Alabama ——
A. B. } dollars (specifying the sum prescribed by the court), unless the said A. B. appears at the present term of this court, and from term to term thereafter until discharged by law, to answer a criminal prosecution for an assault and battery (or other offense, as the case may be)."

4362 (4420) (4847) (4239) (688). **Bail not in open court; form and requisites of.**—When not taken in open court, the undertaking of bail must be in writing, signed by the defendant and at least two sufficient sureties, and approved by the magistrate or officer taking the same; and may be substantially in the following form:

"The State of Alabama, } We, A. B., C. D. and E. F., agree to
—— county. } pay to the State of Alabama —— dollars (the sum prescribed by the magistrate or officer), unless the said A. B. appears at the next term of the —— court of —— county, and from term to term thereafter until discharged by law, to answer a criminal prosecution for the offense of —— (specifying the particular offense with which he is charged).

(Signed) A. B.
C. D.
Approved, G. H., Judge, etc." E. F.

Undertaking of bail, taken on Sunday, during vacation, valid and sanctioned by law.—Hammons's case, 59 Ala. 164. So, an undertaking is not void because of certain irregularities on habeas corpus.—Merrill's case, 46 Ala. 82. Parties

may sign by initial, or mark, or other designation.—Hammons's case, supra. Not void because officer fails to indorse thereon "approved," and sign such indorsement.—Ozeley's case, 59 Ala. 94. Its acceptance, etc., may be otherwise proved.—Ib. An agreement to become bail, on deposit of amount of money with surety, is void as against public policy; and money so paid cannot be recovered back.—Dunkin v. Hodge, 46 Ala. 523. A recognizance held valid, though not sealed.—Hall's case, 9 Ala. 827. So of a recognizance certified by justice of peace under his signature.—Howie's case, 1 Ala. 113; Badger's case, 5 Ala. 21. Omission of names from body of undertaking does not impair it, if regularly acknowledged.—Badger's case, supra. Bond with condition not required by law, not invalid, but only inoperative as to such condition.—Whitted v. Governor, 6 Port. 335; Howie's case, 1 Ala. 113. Not affected by change of time of holding court from that expressed.—Walker's case, 6 Ala. 350. When recognizance joint and several.—Ellison's case, 8 Ala. 273. The following held sufficient designation or description of the offense: Of selling lottery-tickets, etc.—Keipp's case, 49 Ala. 337. Of conspiracy.—Hall's case, 15 Ala. 431. Of carrying concealed weapons.—Hall's case, 9 Ala. 827. Of retailing without license.—Shreeve's case, 11 Ala. 676. Of resisting process.—Browder's case, 9 Ala. 58. Of malicious mischief; the indictment being for "intentionally injuring telegraph-wires."—Welch's case, 36 Ala. 277. So of manslaughter, the indictment being for murder.—Gresham's case, 48 Ala. 625. Variance in defendant's name immaterial.—Tolison's case, 39 Ala. 103. Bail are not discharged on failure to indict at first term, when cause regularly docketed and continued.—Kyle's case, 99 Ala. 256. But if no indictment found at first term and no order is made continuing the cause for investigation, and no order whatever made in the case, bail are discharged.—Rogers's case, 79 Ala. 59. And in such case, the defendant may be discharged on habeas corpus.—Ex parte Stearnes, 104 Ala. 93. When principal required to give new bail and is ordered into custody, sureties on first bail-bond discharged.—Posey's case, 79 Ala. 45.

4363 (4421) (4855) (4247) (696). **Qualifications of bail.**—The qualifications of bail are, that each must be a resident of this state, and a householder and freeholder therein, and that each must be worth, exclusive of property exempt from execution, the amount expressed in the undertaking; but the court, magistrate or officer, in taking bail, may allow more than two persons to justify severally as bail in amounts less than that expressed in the undertaking, provided the whole be equivalent to two sufficient bail.

4364 (4422) (4854) (4246) (695). **How bail given by lunatics, married women and infants.**—It is not necessary that lunatics, married women, or infants should themselves execute or acknowledge the undertaking of bail; but any other person may enter into an undertaking for their appearance.

4365 (4423) (4856). **Certain officers forbidden to become bail in certain cases.**—It shall not be lawful for any judicial or ministerial officer of this state to go bail for any prisoner or other person tried before him, or put in his charge under any criminal accusation, or to sign any bond or other obligation for the release or appearance of such person, either before himself or any other officer or officers.

King's case, 81 Ala. 92.

4366 (4424) (4857) (4248) (697). **Bail required to qualify when doubtful.**—When there is a reasonable doubt as to the sufficiency of the bail, they may be required by the court, magistrate, or officer, to answer fully on oath as to their qualifications.

4367 (4425) (4861) (4252) (701). **Undertakings returned to court.**—All undertakings of bail must be returned by the magistrate or officer by whom taken to the clerk of the court before which the

defendant is bound to appear, within the same time, and in the same manner as is provided by section 5258 (4402) for the return of writs of arrest.

4368 (4426) (4862) (4253) (702). **When new undertaking may be required by court.**—The court, before which any defendant is bound to appear, may require him to enter into a new undertaking, when it appears to said court that the original undertaking was insufficient when entered into, or has since become insufficient from any cause whatever.

When principal required to give new bail and ordered into custody, sureties on first bail-bond discharged.—Posey's case, 79 Ala. 45.

ARTICLE 5.

EFFECT OF UNDERTAKING, AND DISCHARGE OF BAIL.

4369 (4427) (4852) (4244) (693). **Effect of undertaking; to what extent binds parties thereto.**—The undertaking of bail binds the parties thereto, jointly and severally, for the appearance of the defendant on the first day of the court, from day to day of such term, and from day to day of each term thereafter, until he is discharged by law; and, if the trial is removed to another county, for the appearance of the defendant from day to day of each term of the court to which it is removed until discharged by law.

When bail not discharged.—Ingram's case, 27 Ala. 17. Death of principal before forfeiture taken discharges bail.—Pynes's case, 45 Ala. 52. Failure to indict at first term and failure to continue cause, or take forfeiture, is a discontinuance, and discharge of obligors on bail-bond.—Rogers's case, 79 Ala. 59; but if cause is continued, or forfeiture taken at first term, failure to indict does not discharge sureties.—Kyle's case, 99 Ala. 256. Principal may be bound on recognizance when sureties are not.—Calhoun's case, 99 Ala. 279. Forfeiture may be taken against one or more of the sureties without the principal. Kilgrow's case, 76 Ala. 101. The bond is forfeited if principal escapes during trial.—Hawk's case, 84 Ala. 466; Cook's case, 91 Ala. 53; Merrill's case, 46 Ala. 82.

4370 (4428) (4858) (4249) (698). **Bail not discharged by irregularities or by want of qualification.**—No bail are discharged by reason of the want of any of the qualifications required in this chapter, or by reason of there not being the requisite number of bail, or by reason of any other agreement than is expressed in the undertaking, or by reason of the infancy, coverture, lunacy, or any other incapacity of any of the other parties thereto, or because the defendant has not joined in the same.

Surety cannot set up as defense that bond was only delivered in escrow, or that there was only one surety, or that he was not to be bound until another bond with other sureties was made.—Matthews's case, 92 Ala. 89. Approving officer should not sign bail-bond.—King's case, 81 Ala. 92.

4371 (4429) (4859) (4250) (699). **Bail discharged by surrender of principal; may arrest, or authorize arrest of principal.**—Bail may, at any time before a conditional judgment is rendered against them, exonerate themselves by surrendering the defendant; and for that purpose, they may arrest the defendant on a certified copy of the undertaking at any place in the state, or may authorize another person to arrest him by an indorsement in writing on such copy. As amended Feb. 16, 1891, p. 719.

This section construed.—Kilgrow's case, 76 Ala. 101. Legal effect of undertaking, when judgment of conviction suspended on appeal, and bail given to appear at next term, etc.—Williams's case, 55 Ala. 71. Sheriff having accepted and approved one bond, he cannot release sureties thereon by accepting another bond.—Matthews's case, 92 Ala. 89. Prior to amendatory act, the surrender of the defendant at any time before final judgment exonerated bail.—Bearden's case, 89 Ala. 21.

Ib. **4372. Arrest by bail after conditional judgment.**—After the rendition of conditional judgment against them, bail may arrest the defendant as provided in the preceding section; but such arrest and delivery of the defendant to the sheriff shall not exonerate the bail unless, in the judgment of the court, a good and sufficient excuse is given for the failure of the defendant to appear at the time the conditional judgment was rendered.

4373 (4430) (4860) (4251) (700). **Surrender of defendant to sheriff necessary to exonerate bail; when new bail allowed.**—To exonerate the bail, the surrender of the defendant must be made to the sheriff of the county in which the court is held to which the defendant is bound to appear, or to which the trial has been removed; and if the charge is for a misdemeanor, the sheriff may discharge him on his giving new bail; otherwise, must keep him in jail until discharged by law.

ARTICLE 6.

FORFEITURE; PROCEEDINGS THEREON.

4374 (4431) (4853) (4245) (694). **Undertaking of bail; essence of, and when forfeited.**—The essence of all undertakings of bail, whether upon a warrant, writ of arrest, suspension of judgment, writ of error, or in any other case, is the appearance of the defendant at court; and the undertaking is forfeited by the failure of the defendant to appear, although the offense, judgment, or other matter is incorrectly described in such undertaking, the particular case or matter to which the undertaking is applicable being made to appear to the court.

There must be some designation or description, although its correctness is of slight importance; and though undertaking shows the indictment is not for any punishable offense, it is no defense to forfeiture and proceedings.—Eldred's case, 31 Ala. 393; Vasser's case, 32 Ala. 586; Toleson's case, 39 Ala. 103; Keipp's case, 49 Ala. 337. Technical accuracy in describing the offense was never required; a substantial description sufficient.—Hall's case, 9 Ala. 827; Weaver's case, 18 Ala. 293. But if no offense, case, or prosecution is mentioned, the undertaking is deficient, and the statute has no application.—Whitley's case, 40 Ala. 728. And its deficiencies cannot be supplied by parol evidence.—Ib.; Dover's case, 45 Ala. 244. When parol proof may aid.—Vasser's case, 32 Ala. 586. Nor does this statute apply where there is a description of a different offense; for instance, a bond designating or describing offense as *perjury* cannot hold under charge of *burglary*.—Gray's case, 43 Ala. 41. Great particularity not required, and technical objections not available, if the particular case is made to appear to the court.—Holcombe's case, 99 Ala. 185. Defendant being bound over for both burglary and larceny, his bail equally bound if indictment is found for either.—Ib. Where accused is committed and transferred to another county, the sheriff of the county where he is so transferred may take bail.—Ib. Bail not discharged on failure to indict at first term, if cause continued or forfeiture taken.—Kyle's case, 99 Ala. 256. But failure to either continue case or take forfeiture at first term is a discharge. Rogers's case, 79 Ala. 59. Bail not discharged if principal escapes during trial.

Cook's case, 91 Ala. 53; Hawk's case, 84 Ala. 466. On discharge of bail, cost adjudged against county.—Parker's case, 83 Ala. 269.

4375 (4432) (4863) (4254) (203). **Proceedings on forfeiture of undertaking; judgment nisi.**—Whenever an undertaking of bail is forfeited by the failure of the defendant to appear as required, a conditional judgment must be rendered by the court in favor of the state, for the use of the proper county, against the parties to the undertaking for the sum therein expressed; which judgment may be substantially as follows:

"The State } Indictment for assault and battery (or other offense,
vs. } as the case may be).
A. B. }

It appearing to the court that the said A. B., together with C. D. and E. F., agreed to pay the State of Alabama ——— dollars (the sum specified in the undertaking), unless the said A. B. appeared at this term of the court to answer in this case; and the said A. B. having failed to appear, it is therefore ordered that the State of Alabama, for the use of ——— county, recover of the said A. B., C. D. and E. F. on said undertaking the sum of ——— dollars (the sum specified in the undertaking), unless they appear at the next term of this court, and show cause why this judgment should not be made absolute."

Judgment nisi in the form prescribed by the Code is sufficient.—Cantaline's case, 33 Ala. 439. It should state the offense, or designate it (as in the form), to sustain judgment final.—Gresham's case, 48 Ala. 625; Faulk's case, 9 Ala. 919; Lindsay's case, 15 Ala. 44; Hall's case, Ib. 431. And must not recite charge variant from that in recognizance.—Howie's case, 1 Ala. 113; Farr's case, 6 Ala. 795; Faulk's case, 9 Ala. 919; Badger's case, 5 Ala. 21; Gray's case, 43 Ala. 41. But need not set out the recognizance.—Howie's case, 1 Ala. 113. Nor literally describe it; for, if stated according to its legal effect, neither plea of nul tiel record nor demurrer will be sustained.—Williams' case, 55 Ala. 71. Judgment nisi need not show that sureties were called to produce the principal.—Hinson's case, 4 Ala. 671; Richardson's case, 31 Ala. 347. Proceedings civil, not criminal.—Parker's case, 83 Ala. 269; Hatch's case, 40 Ala. 718. If on final hearing judgment nisi is set aside, judgment is properly rendered against the county for costs.—Parker's case, 83 Ala. 269; Dover's case, 45 Ala. 255. What sufficient description of case in judgment nisi.—Holcombe's case, 99 Ala. 185.

4376 (4433) (4864) (4255) (704). **Same; scire facias or notice of judgment nisi.**—A notice of the rendition of such judgment must be issued by the clerk to each defendant, which notice may be in the following form:

"The State of Alabama, } To A. B., C. D. and E. F.: You are
——— county. } hereby notified that, at the —— term, 18—, of the —— court of said county, a judgment was rendered against you, of which the following is a copy: (Setting out the conditional judgment); and the said judgment will be made absolute against you at the next term of said court, unless you then appear and show cause against the same."

Proceedings by scire facias, a civil action in which state is plaintiff and recognizors defendants.—See Peck's case, 63 Ala. 201; Hunt's case, Ib. 196; Dover's case, 45 Ala. 255; Hall's case, 15 Ala. 431; Lloyd's case, Minor, 34. The county is the beneficiary in the suit.—Dover's case, 45 Ala. 255; Only the statutory form of undertaking of bail can be enforced by the statutory remedy.—Ib. Power of the court in excusing default, or in discharging or fixing liability of bail, is not absolute.—Hammons's case, 59 Ala. 164. The notice should set out

the judgment, or recite it substantially.—Gresham's case, 48 Ala. 625. Should be so framed that each party may show cause why judgment should not be made absolute against him.—Hunt's case, 63 Ala. 196. Good plea that recognizance extorted from principal by duress of illegal and forcible imprisonment. Brantley's case, 27 Ala. 44. When estopped from pleading that it was extorted. Whitted v. Governor, 6 Port. 335. Death of accused before forfeiture good defense.—Pynes's case, 45 Ala. 52. Also, if undertaking be for appearance "at this term," if case reversed and forfeiture at a subsequent term set up by plea of nul tiel record, craving oyer, etc.—Williams's case, 55 Ala. 72. Bail-bond prima facie sufficient; proof of its execution, if denied, must be set up in defense by proper proof; too late on appeal.—Gresham's case, 48 Ala. 625. When sureties cannot raise objection to manner of arrest, or sufficiency of indictment.—Peck's case, 63 Ala. 201. Legal sufficiency of indictment cannot be tested by demurrer to scire facias.—Ib.; Eldred's case, 31 Ala. 393; Williams's case, 20 Ala. 63; Weaver's case, 18 Ala. 293. Not good plea, that defendant, at time of judgment nisi, was confined in penitentiary of another state.—Cain's case, 55 Ala. 170. When plea demurrable.—Merrill's case, 46 Ala. 82.

4377 (4434) (4865) (4256) (705). **Notice or scire facias executed; return.**—The notice may be executed by the sheriff of any county in the state, and must be returned by the officer executing it, with his proper return thereon indorsed, by the first day of the next term of the court from which it issued.

4378 (4435) (4866) (4257) (706). **Alias notice; two returns "not found" equivalent to personal service.**—If the notice is not served on any of the parties to the undertaking, such other notices as are necessary may from time to time be issued; but two returns of "not found" by the proper officer are equivalent to personal service.

Keipp's case, 49 Ala. 337; Hunt's case, 63 Ala. 196.

4379 (4436) (4867) (4258) (707). **Conditional judgment set aside, reduced, or made absolute.**—If the defendants appear and show sufficient cause for the default, to be determined by the court, the conditional judgment must be set aside; but if the excuse is not sufficient, or if they fail to appear, the judgment must be made absolute for the entire sum expressed in the undertaking, or any portion thereof, according to the circumstances.

Judgment final against all should show that all failed to appear, or, appearing, failed to show sufficient excuse.—Hunt's case, 63 Ala. 196. Cannot render judgment final against sureties, and set aside judgment nisi against principal, in same entry; works discontinuance as to surety.—Hatch's case, 40 Ala. 718. Court may impose full amount, or any part of penalty.—Cain's case, 55 Ala. 170. Confinement of defendant under conviction in another state, though not an excuse, may mitigate the penalty.—Ib. To support judgment final, record must show return of scire facias "executed," or two returns "not found."—Hunt's case, 63 Ala. 196. When supreme court will amend, and discontinue as to one surety not served or returned "not found."—Ib. When sureties cannot complain on appeal of refusal of court to require clerk to enter certain matters on record.—Hendon's case, 49 Ala. 380. When judgment sustained though alias scire facias not set out in record.—Cantaline's case, 33 Ala. 439. Undertaking no part of record, unless made so by plea or bill of exceptions.—Hendon's case, 49 Ala. 380; Richardson's case, 31 Ala. 347; Shreeve's case, 11 Ala. 676; Robinson's case, 5 Ala. 706. Final judgment on an undertaking of bail cannot be compromised with solicitor.—Dunkin v. Hodge, 46 Ala. 523. It is no defense that accused escaped during trial.—Cook's case, 91 Ala. 53. The issue is triable by the court, and if in a case an issue should arise properly triable by a jury, a failure to demand jury is a waiver.—Posey's case, 79 Ala. 45. Sureties discharged by order for new recognizance.—Ib.

4380 (4437) (4868) (4259) (708). **Excuses for default heard at any time, and allowed without cost.**—Excuses for defaults must be heard by the court, on application, at any time when not engaged in

other business; and when a conditional judgment is set aside, no cost must be imposed on the defendants.

See note to preceding section.

CHAPTER 130.

BASTARDY. 4381–4405.

4381 (4842) (4071) (4396) (3799). **Reputed father of bastard arrested on complaint of mother; warrant.**—When any single woman, pregnant with, or delivered of a bastard child, makes complaint on oath to any justice of the county where she is so pregnant or delivered, accusing any one of being the father of such child, such justice must issue a warrant against such person, and cause him to be brought before him.

In absence of statutory provisions, father under no legal obligation to support illegitimate child.—Simmons v. Bull, 21 Ala. 501. Proceedings under this chapter partake of the nature of both civil and criminal proceedings; may be styled quasi criminal.—Hunter's case, 67 Ala. 81; Smith's case, 73 Ala. 11; Dorgan's case, 72 Ala. 173. Not a misdemeanor.—Ib. 173; Hunter's case, 67 Ala. 81; Satterwhite's case, 28 Ala. 70. Complaint must aver or warrant must show that woman was single.—Smith's case, 73 Ala. 11; Dorgan's case, 72 Ala. 173; Williams's case, 29 Ala. 9. Else justice has no jurisdiction; must also appear that woman was pregnant or delivered in the county.—Ib. 9. May hear evidence outside of complaint.—Ib. 9. Technical rules not required in proceedings like this.—Ib. 9; Austin v. Pickett, 9 Ala. 102; Dorgan's case, 72 Ala. 173; Crosby v. Hawthorn, 25 Ala. 221. Married woman cannot prefer this complaint, although her husband has left her.—Kerr's case, 17 Ala. 328. Statute in this case penal, and must be strictly construed.—Ib. Complaint before birth of child made in county of mother's residence; if after birth made in county where child born.—Wilson's case, 18 Ala. 757; Woodson's case, 99 Ala. 201. Infant defendant need not appear by next friend.—Miller's case, 110 Ala. 69. Maintenance and education of illegitimate offspring born, or to be born, are its objects and purposes.—Shows v. Solomon, 91 Ala. 390. Not discontinued by failure of clerk to place same on docket.—Miller's case, supra. Sufficiency of complaint.—Ib. Bastardy proceedings not criminal proceedings, such as to prevent counsel from commenting on defendant's failure to testify, nor to require proof to a moral certainty; only reasonable certainty is required.—Ib. Motion to quash affidavit or warrant comes too late if made for first time in circuit court.—Walker's case, 108 Ala. 56. Defects in complaint may be cured by complaint filed by solicitor in circuit court.—Ib. When judgment may be rendered nunc pro tunc.—Kuehlthau's case, 92 Ala. 91. A warrant or complaint alleging only "that the offense of bastardy has been committed, and that A. B. is guilty thereof" is void absolutely. Collins's case, 78 Ala. 433.

4382 (4843) (4075) (4400) (3803). **Justice to summon witnesses.** The justice of the peace must, on the application of the complainant, or the accused, issue subpœnas for witnesses.

4383 (4844) (4072) (4397) (3800). **Examination; if probable cause, held under bond to appear at court and answer.**—Such justice must then, in the presence of the accused, examine the complainant and her witnesses, and may examine also the accused and his witnesses, respecting the charge; and, if it appears that there is probable cause to believe that the accused is guilty of the charge, must require him to enter into bond, with sufficient surety, in a sum

not exceeding one thousand dollars, to be approved by such justice, payable to the State of Alabama, and conditioned that the accused will appear at the next term of the circuit or city court of such county.*

Justice no power to render final judgment.—Nicholson's case, 72 Ala. 176. His duties purely preliminary to ascertain probable cause.—Ib.; Smith's case, 73 Ala. 11. An examination and discharge do not preclude another examination.—Nicholson's case, supra. Nor can action of justice be pleaded in bar to second proceedings.—Ib. Mother of child may accept compromise, and dismiss prosecution.—Martin's case, 62 Ala. 119; Robinson v. Crenshaw, 2 Stew. & Port. 276; Ashburne v. Gibson, 9 Port. 549; Wilson's case, 18 Ala. 757; Merritt v. Flemming, 42 Ala. 234. Bond failing to require appearance at "next term" of court is void, and proceedings under it coram non judice. Seale v. McClanahan, 21 Ala. 345. Sufficiency of bond cannot be questioned, if defendant appears; when not invalid.—Hanna's case, 60 Ala. 102. Formerly held that appearance bond should be made payable to governor and his successors, the statute being silent on this point.—Trawick v. Davis, 4 Ala. 328; Chaudron v. Fitzpatrick, 19 Ala. 649; Lake's case, 2 Stew. 395.

4384 (4845) (4073) (4398) (3801). **Justice to return bond to circuit or city court.**—Such justice must return such bond and complaint to the clerk of the circuit or city court, by the first day of the term at which the accused is bound to appear.*

Proceedings before justice become part of record.—Wilson's case, 18 Ala. 757. What necessary under this section to enable circuit court to take cognizance of the cause.—Hanna's case, 60 Ala. 102. Warrant may also be returned, and from its recitals jurisdiction may be sustained.—Williams's case, 29 Ala. 9. Formerly proceedings had in county and probate courts.—See Moore v. Maguire, 26 Ala. 461; Castleberry's case, 23 Ala. 85.

4385 (4846) (4074) (4399) (3802). **Reputed father imprisoned on default of bond.**—On the failure to give the bond as required, the justice must commit the accused to jail until he gives the same, or is otherwise discharged by law.

4386 (4847) (4075) (4400) (3803). **Clerk to issue subpœnas.** The clerk of the circuit court, after the return of the bond, must, on the application of the complainant or accused, issue subpœnas for witnesses.

4387 (4848) (4092) (4417) (3820). **State and accused parties to record.**—The proceedings in bastardy are conducted in the name of the state as plaintiff, and the accused as defendant; but no proceeding shall be instituted under this chapter after the lapse of one year from the birth of the child, unless the defendant has, in meanwhile, acknowledged or supported the child.

Though the state, and not the woman, is a party, yet if state fails, she may be liable for costs; infancy of complainant immaterial.—Hanna's case, 60 Ala. 102. The female is merely the informer, not a party, and she recovers nothing.—Pruitt's case, 16 Ala. 707. The mother should not be made party to a writ of error, prosecuted by the father.—Trawick v. Davis, 4 Ala. 328. In a prosecution by infant, she need not appear by next friend.—Miller's case, 110 Ala. 69. Barred after one year from birth of child, if defendant has not supported child.—Woodson's case, 99 Ala. 201. When judgment may be rendered nunc pro tunc.—Kuehlthau's case, 92 Ala. 91.

4388 (4849) (4076) (4401) (3804). **Forfeiture of bond; conditional judgment and writ of arrest.**—If the accused does not appear, his bond is forfeited, and a conditional judgment may be rendered thereon, and the like proceedings had as in case of the

*The words "or city" inserted by joint committee.

forfeiture of bonds for indictable offenses; and the clerk must issue a writ of arrest, as in criminal cases on indictment found.

Appearance bond binding on all obligors until final disposition of case. Trawick v. Davis, 4 Ala. 328. Defendant liable on bond for non-appearance, although not convicted.—Lake's case, 2 Stew. 395. Money collected on forfeited bond not part of fine and forfeiture fund.—Shows v. Solomon, 91 Ala. 390.

4389 (4850) (4077) (4402) (3805). **Rearrest; defendant discharged on bond of one thousand dollars.**—The sheriff, on arresting the defendant on such writ of arrest, may discharge him on his giving bail for his appearance at court, in the sum of not more than one thousand dollars, to answer a complaint of bastardy; and if such bond is forfeited, a conditional judgment may be rendered thereon, a writ of arrest issue, and the same proceedings had as often as may be necessary.

4390 (4851) (4078) (4403) (3806). **On appearance, issue made up.**—The court, on the appearance of the accused, must, if he demand it, cause an issue to be made up, to ascertain whether he is the real father of the child or not.

Necessary to submit case to jury only when reputed father demands it. Trawick v. Davis, 4 Ala. 328; Lake's case, 2 Stew. 395. And the only issue tried by jury was, under former statute, as to the paternity of the child.—Ib. 328; Ib. 395. Allegation that complainant was a single woman, is part of issue made up and tried.—Dorgan's case, 72 Ala. 173. Number of challenges of jurors not prescribed.—Ib; but see present statute. Defect in affidavit and warrant raised by motion to quash, not by demurrer; but motion must be made before justice, else too late.—Smith's case, 73 Ala. 11. After appearance and trial, too late to object to recognizance taken by justice.—Wilson's case, 18 Ala. 757. After plea of guilty and execution of proper bond, etc., too late to object to defects in complaint or process before justice.—Pruitt's case, 16 Ala. 705. Objection to voidable, defective warrant must be made by motion to quash before regular appearance of defendant.—Trawick v. Davis, 4 Ala. 328. Not required that evidence should prove guilt beyond a reasonable doubt; sufficiency of proof, etc.—Hunter's case, 67 Ala. 82. See Satterwhite's case, 28 Ala. 65. No statute of limitations; reason therefor.—Satterwhite's case, 28 Ala. 65. Now changed by statute. Action of justice not pleadable as former acquittal or conviction.—Nicholson's case, 72 Ala. 176. Release or compromise permitted, and ground for plea in bar, but not for motion to dismiss; but release by infant mother, if repudiated by her, is no bar.—Wilson's case, 18 Ala. 757. But compromise made or offered no evidence of guilt, if no admission of fact is made. Martin's case, 62 Ala. 119. Relevancy of suspicious circumstances implying admission or consciousness of guilt.—Nicholson's case, 72 Ala. 176. Verdict affirming that defendant is real father of child sufficient.—Berryman's case, 9 Ala. 455. Amendable defects of warrant or affidavit cannot be raised for first time in circuit court; may be cured by complaint filed by solicitor.—Walker's case, 108 Ala. 56. Warrant and affidavit charging only that the offense of bastardy was committed and that A. B. was guilty is absolutely void.—Collins's case, 78 Ala. 433. The trial is quasi criminal, but the rules as to evidence, competency of witness, argument of counsel, etc., are governed by rules of civil procedure.—Miller's case, 110 Ala. 69.

4391 (4852). **Challenge of jurors.**—On a trial of the issue before a jury, each party has the right to challenge six jurors peremptorily.

4392 (4853) (4079) (4404) (3807). **Either party may be examined.**—On the trial of such issue, the accuser and accused are each entitled to their oath.

Either accused or complainant a competent witness; and their testimony weighed like that of other witnesses.—Satterwhite's case, 27 Ala. 65. Misleading charge as to sufficiency of proof, when two witnesses of equal credibility swear against each other.—Dorgan's case, 72 Ala. 175.

4393 (4854) (4080) (4405) (3808). **On conviction, judgment for costs, and bond required to support and educate child.**—On the

trial of such issue, if found against the defendant, judgment must be rendered against him for the costs, and he must also be required to enter into bond and surety, to be approved by the judge, in the sum of one thousand dollars, payable to the state, and conditioned to pay such sum, not exceeding fifty dollars a year, as the court may prescribe on the first Monday in January in each year, for ten years, to the judge of probate of the county, for the support and education of the child, which bond must be recorded.

Correct construction of statute is, that accused be compelled to support child, not until it is ten years of age, but ten years from date of judgment. Pruitt's case, 16 Ala. 705. Accused liable for costs if convicted.—Berryman's case, 9 Ala. 455. Form of judgment-entry; what must show.—Smith's case, 73 Ala. 12. Erroneous judgment; what a misprision.—Wilson's case, 18 Ala. 757. Amendment of judgment allowed to require payments on first Monday, instead of first day of January, etc.—Williams's case, 29 Ala. 9. Under former statutes, judgment should be rendered in favor of judge of county court. Brown's case, Minor, 208; Trawick v. Davis, 4 Ala. 328. But omission to state in whose favor it was rendered, would not reverse.—Yarborough's case, 15 Ala. 556; Seale v. McClanahan, 21 Ala. 345. Money collected on forfeited bond not part of fine and forfeiture fund.—Shows v. Solomon, 91 Ala. 390. The provision is intended for the protection of society and the illegitimate child.—Ib. Judgment nunc pro tunc.—Kuehlthau's case, 92 Ala. 91.

4394 (4855) (4081) (4406) (3809). **Judgment on failure to give bond.**—On failure to give such bond, the court must render judgment against the defendant for such sum as, at legal interest, will produce the amount directed to be paid yearly; and he must also be sentenced to hard labor for the county for one year, unless in the meantime he executes the bond required, or pays the judgment and costs.

See note to preceding section. Sufficiency of judgment.—Austin v. Pickett, 9 Ala. 102; Berryman's case, Ib. 455. Imprisonment not unconstitutional. Paulk's case, 52 Ala. 427. Judgment not sustained by evidence of a bond; would not authorize execution.—Isaacs's case, 5 Stew. & Port. 402.

4395 (4856) (4082) (4407) (3810). **Execution on bond issues on failure to make payments.**—If such bond is given, on failure to make any of the payments required, to the judge of probate, on the first Monday in January in each year, execution may issue for such amount against all the obligors to the bond, on the application of the judge of probate, which, when collected, must be paid to him.

Must be a bond or evidence of a bond, to authorize execution.—Isaacs's case, 5 Stew. & Port. 402. Direction in judgment that execution issue thereon for each default, held regular.—Trawick v. Davis, 4 Ala. 332.

4396 (4857) (4083) (4408) (3811). **Bond; when given after the adjournment of court.**—If such bond is not given before the adjournment of court, it may be given at any time before the term of imprisonment expires, and in such case, must be approved by the judge of probate and recorded and filed in the office of the clerk of the circuit court, and execution may issue thereon from time to time, as under the provisions of the preceding section, and the amount, when collected, paid to the judge of probate.

4397 (4858) (4084) (4409) (3812). **Defendant discharged on filing bond, paying costs, etc.**—In the case provided for in the preceding section, the defendant must be discharged from imprisonment on payment of the costs, and the judgment against him is discharged.

4398 (4859) (4085) (4410) (3813). **Proceedings when defendant is not found.**—If the accused does not appear, after the return of two writs of arrest against him "not found" by the sheriff of the county in which the court to which the complaint is returned is held, the facts stated in the complaint must be taken as admitted, and judgment rendered against the accused as provided for by section 4394 (4855); and at any time before the payment of such judgment, the defendant may be arrested by a writ of arrest thereon, directed to the sheriff, commanding him to take the defendant and deliver him to the proper authorities for the execution of the judgment.

Investigation of charge and judgment in absence of accused.—McClanahan's case, 21 Ala. 345; Trawick v. Davis, 4 Ala. 328; Yarborough's case, 15 Ala. 558. Could be attached, if absent, and brought into court, and ordered to remain in custody until he gives bond required by statute.—Yarborough's case, 15 Ala. 556.

4399 (4860) (4086) (4411) (3814). **Discharged from imprisonment on paying judgment or giving bond.**—In the case provided for in the preceding section, the defendant can be discharged from imprisonment by the payment of the judgment, or executing the bond in conformity with the provisions of section 4393 (4854).

Kuehlthau's case, 92 Ala. 91.

4400 (4861) (4087) (4412) (3815). **Money collected on bond applied to support of child.**—The amount collected on the forfeiture of any bond for the appearance of the defendant, and on the judgment rendered against him, must be paid into the county treasury; and the interest thereon, not exceeding the yearly sum directed to be paid by the court, must be paid to the judge of probate for the support and education of the child.

4401 (4862) (4088) (4413) (3816). **Such payment not made after giving bond.**—But such payment must not be made after the defendant gives the bond required by section 4393 (4854).

4402 (4863) (4089) (4414) (3817). **Guardian appointed to receive child's money.**—The judge of probate must appoint a guardian for such child, and, upon his giving bond and security as other guardians, the amount received by the judge of probate must be paid to him.

4403 (4864) (4090) (4415) (3818). **Death of child or marriage of parents; effect of.**—If the child is not born alive, or if, being born alive, it dies, or on the marriage of the mother and reputed father, on the ascertainment of such facts by the judge of probate, on motion to the circuit court, and proof thereof, an entry of record must be made thereof, and the bond be declared void, the judgment vacated, the defendant discharged, and the portion of such judgment paid into the county treasury must be paid, on the certificate of the clerk of the circuit court of the vacation of such judgment, to the defendant.

Death of child pending proceedings was held no ground for motion to dismiss, but good for plea puis darrein continuance.—Satterwhite's case, 32 Ala. 578. Not necessary, on appeal, that record should disclose that child was living at time of judgment.—Trawick v. Davis, 4 Ala. 328. Marriage of woman does not ipso facto abate proceedings.—Berryman's case, 9 Ala. 455. Nor is marriage inferred from change of name in subsequent proceedings.—Ib.

4404 (4865) (4091) (4416) (3819). **Complainant pays cost on verdict for defendant.**—In case the issue provided for by section 4390 (4851) is found against the complainant, judgment for costs must be rendered against her.

4405 (4866) (4093) (4418) (3821). **Either party may appeal; security for costs, execution, etc.**—Either party may appeal to the supreme court within thirty days after judgment. If the appeal is taken by the state, the complainant must give security for the costs of the appeal, if the judgment is affirmed; and the defendant, also, if the appeal is taken by him, must give the same security, to be approved by the clerk of the circuit court, the names of the sureties certified with the record to the appellate court, and execution may issue for the costs of the appeal against them from such court, if the judgment of the circuit court is affirmed. But when either the complainant or defendant makes affidavit that she or he is unable, after diligent effort, to make the appeal bond, they may appeal without any bond.

The security not required to be in any prescribed form; may be either a bond or simple acknowledgment in writing.—Satterwhite's case, 28 Ala. 68, explaining Williams's case, 26 Ala. 85, where the bond was held defective. Misdescription of judgment would be fatal; what omission may be supplied by comparison with clerk's certificate, or other parts of record.—Ib. 68. When supreme court will not reverse because evidence set out in bill of exceptions fails to show that complainant was a single or unmarried woman.—Dorgan's case, 72 Ala. 175.

CHAPTER 131.

BIGAMY. 4406, 4407.

4406 (4016) (4185) (3599) (58). **Bigamy, and bigamous cohabitation; punishment of.**—If any person, having a former wife or husband living, marries another, or continues to cohabit with such second husband or wife in this state, he or she must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than five years. (Form 18.)

Two distinct offenses created by the statute.—Brewer's case, 59 Ala. 101; Beggs's case, 55 Ala. 108. **Bigamy** is committed by illegal second marriage without cohabitation, and is **indictable** only in county of second marriage. Brewer's case, 59 Ala. 101; Beggs's case, 55 Ala. 108; Williams's case, 44 Ala. 24. While **subsequent cohabitation** is **indictable** in any county where committed. Beggs' case, 55 Ala. 108; Brewer's case, 59 Ala. 101. But **conviction of bigamy** is not allowed on proof of subsequent cohabitation only, when second marriage took place in another county or state.—Beggs's case, 55 Ala. 108. **What person guilty of bigamy.**—Jones's case, 67 Ala. 84. **Acquittal of bigamy** no bar to indictment for subsequent cohabitation.—Brewer's case, 59 Ala. 101. **Intent;** what necessary.—Dotson's case, 62 Ala. 141. **Marriage by infant** under age of consent being voidable only, is a marriage in fact until disaffirmed.—Beggs's case, 55 Ala. 108; Cooley's case, Ib. 162. **Marriage under duress or fear** may be void, but not if fear be of prosecution for bastardy.—Williams's case, 44 Ala. 24. Oral **proof of marriage** admissible.—Brewer's case, 59 Ala. 101. Unsworn bill for divorce inadmissible.—Cooley's case, 55 Ala. 162. Certified transcript of marriage license, with certificate of solemnization of marriage, admissible without official seal.—Beggs's case, 55 Ala. 108. First marriage proved by co-

habitation and confession without the record or a witness to it.—Langtry's case, 30 Ala. 536; Williams's case, 54 Ala. 131. But see Brown's case, 52 Ala. 338. But such proof cannot make a void marriage valid.—Williams's case, 44 Ala. 24. Proof of marriage in another state by confession made there or here. Williams's case, 54 Ala. 131. **First and lawful wife incompetent witness** against the husband.—Williams's case, 44 Ala. 24; Salter's case, 92 Ala. 68. But the second wife, so called, is competent.—Salter's case, supra. Rumor or belief that former husband or wife is dead, **no defense.**—Jones's case, 67 Ala. 84. A marriage solemnized without a valid license, not followed by cohabitation is void.—Ashley's case, 109 Ala. 48. The issuance of marriage license by the judge of probate, while it is a ministerial act, involves discretion, and the power cannot be delegated, except to a qualified clerk of such office.—Ib. Indictment must aver that second marriage was "unlawful," "having a former wife living" is insufficient.—Parker's case, 77 Ala. 47. The fact of the former marriage, and that first wife was living at time of second marriage, must be proved; but each may be proved by confessions, or circumstantial evidence. Parker's case, 77 Ala. 47.

4407 (4017) (4186) (3600) (59). **Same; exceptions.**—The provisions of the preceding section do not apply to any person who, prior to such second marriage, had procured a decree from a court of competent jurisdiction, dissolving his or her former marriage, and allowing him or her the privilege of marrying again; nor to any person who, at the time of such second marriage, did not know that his or her former husband or wife was living, and whose former husband or wife had remained absent from him or her for the last five years preceding such second marriage.

If defendant left his wife in another state, her continued residence there is not "absence" within meaning of this section.—Parker's case, 77 Ala. 47.

CHAPTER 132.

BLACKMAIL.

4408. Levying blackmail.—Any person who shall levy, or attempt to levy, blackmail on another, by making, threatening to make, or attempting to make, any disclosure, oral or written, or by publication, injurious to the character of any person for the purpose of getting money or other benefit, or maliciously for the purpose of revenge and having a tendency to create a breach of the peace, must, on conviction, be punished by a fine not exceeding one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, not exceeding twelve months. Feb. 18, 1895, p. 888.

CHAPTER 133.

BRIBERY. 4409-4416.

4409 (3913) (4116) (3560) (20). **Bribery of executive, legislative, or judicial officers.**—Any person, who corruptly offers, prom-

ises, or gives to any executive, legislative, or judicial officer, after his election or appointment, either before or after he has been qualified, any gift, gratuity, or thing of value, with intent to influence his act, vote, opinion, decision, or judgment, on any cause, matter, or proceeding, which may be then pending, or which may be by law brought before him in his official capacity, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than ten years.

4410 (3914) (4117) (3561) (21). **Accepting bribe by such officer.** Any executive, legislative, or judicial officer, who corruptly accepts, or agrees to accept, any gift, or gratuity, or other thing of value, or any promise to make any gift, or to do any act beneficial to such officer, under an agreement, or with an understanding that his act, vote, opinion, decision, or judgment is to be given in any particular manner, or upon any particular side of any cause, question, or proceeding, which is pending, or may be by law brought before him in his official capacity, or that he is to make any particular appointment in his official capacity, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than ten years.

4411 (3915) (4118) (3562) (22). **Bribery of ministerial officer, juror, or arbitrator.**—Any person, who corruptly offers, promises, or gives to any ministerial officer of any court of law or equity in this state, or to any auditor, juror, arbitrator, umpire, or referee, any gift, gratuity, or thing of value, with intent to bias the mind, or influence the decision of such ministerial officer, auditor, juror, arbitrator, umpire, or referee, in relation to any cause or matter which is pending in any of said courts, or before such arbitrator, umpire, or referee, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than five years.

If the offer "is with the intent to bias the mind, or to influence the decision of the juror," the offense is complete.—White's case, 103 Ala. 72. Drunkenness as a defense, and evidence thereof.—Ib. An offer to perform services for juror is sufficient "thing of value."—Caruthers's case, 74 Ala. 406. A general description of the offense is all that is required.—Caruthers's case, 74 Ala. 406. Offer to bribe was not a felony at common law.—Rivers's case, 97 Ala. 72.

4412 (3916) (4119) (3563) (23). **Same; juror, if summoned, need not have been sworn.**—To authorize a conviction under the last section for bribing, or offering to bribe a juror, it is not necessary that such juror should have been actually sworn or qualified, but it is sufficient that he had been summoned under legal authority.

4413 (3917) (4120) (3564) (24). **Accepting bribe by such officer, juror, etc.**—Any ministerial officer of any court, or any person summoned as a juror, or appointed an auditor, arbitrator, umpire, or referee, who corruptly takes, or agrees to take any thing to give his verdict, award, or report, or corruptly receives, or agrees to receive, any gift or gratuity whatever, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than five years.

Diggs's case, 49 Ala. 311.

4414 (3918) (4122) (3566) (26). **Bribery of officer to stock jury.**

Any person, who gives, offers, or promises to any sheriff or other officer any gift, gratuity, or thing of value, to induce him to summon a jury or juror, with the intent to produce a result favorable to either party in any cause pending in any court, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than five years.

4415 (3919) (4123) (3567) (27). **Same; connivance of sheriff at such offense.**—Any sheriff, who connives at the commission of the offense prohibited by the preceding section, by any constable, bailiff, or deputy-sheriff, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than five years.

4416 (3920) (4124) (3568). **Bribery to commit offenses.**—Any person, who corruptly gives, offers, or promises any gift, gratuity, or thing of value, to another person, with intent to induce or influence such person to commit any crime or offense punishable as a felony, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than ten years; and if the offense, for the commission of which such bribe is offered, be less than a felony, then the person giving, offering, or promising such bribe must, on conviction, be punished as if he had committed such offense. (Form 19.)

Offer to bribe another to commit perjury was not a felony at common law; but the constituent elements are the same.—Rivers's case, 97 Ala. 72. The indictment must describe the court, and the proceedings thereon and the facts to be sworn to by the witness.—Ib.

CHAPTER 134.

BURGLARY. 4417-4419.

4417 (3786) (4343) (3695) (149). **Burglary in a dwelling-house, shop, storehouse, building, inclosure, etc.**—Any person, who, either in the night or day time, with intent to steal, or to commit a felony, breaks into and enters a dwelling-house, or any building, structure, or inclosure within the curtilage of a dwelling-house, though not forming a part thereof; or into any shop, store, warehouse, or other building, structure, or inclosure, in which any goods, merchandise, or other valuable thing, is kept for use, sale, or deposit, provided such structure or inclosure, other than a shop, store, warehouse, or building, is specially constructed or made to keep such goods, merchandise, or other valuable thing, is guilty of burglary, and must, on conviction, be imprisoned in the penitentiary for not less than one, nor more than twenty years. (Form 21.)

"**Dwelling-house**," same meaning as at common law.—Ex parte Vincent, 26 Ala. 145. **Curtilage** includes smoke-house, part in yard and part outside; and breaking, etc., from without sufficient.—Fisher's case, 43 Ala. 17. House used as store in front and where clerk slept in rear, held a **dwelling-house**.—Ex parte Vincent, 26 Ala. 145. Sufficient **breaking** and **entering**.—Donohoo's

case, 36 Ala. 281. Carter's case, 68 Ala. 96; Pines's case, 50 Ala. 153. Going down an open chimney sufficient; or even getting into a chimney and no further, with intent to steal.—Donohoo's case, 36 Ala. 381; Walker's case, 52 Ala. 376; Olds's case, 97 Ala. 81. Breaking outside shutters and protruding hand, without breaking inside window, not sufficient entering.—McCall's case, 4 Ala. 643. Entering open window, and opening door to let in accomplices, not burglary, unless accomplices enter, though may be attempt to commit burglary. Ray's case, 66 Ala. 281. Boring a hole through floor of corn-crib, and letting corn run out, is sufficient, the use of the instrument constituting both the breaking and entering.—Walker's case, 63 Ala. 49. Employe left in charge of house may commit burglary in room where he had no right to enter.—Hild's case, 67 Ala. 39. A servant having the key and right to enter office in day-time, may commit burglary by unlocking and entering to steal at night; but not if in the habit of sleeping there at night, and forms intent to steal after entering.—Lowder's case, 63 Ala. 143. Constructive breaking, by servant prearranged to capture thief, held not burglary, when.—Allen's case, 40 Ala. 334. Two persons owning adjoining rooms, not burglary for either to unlock his own door with intent to enter an opening left between the rooms and steal in other's room. Stone's case, 63 Ala. 115. A farm-hand employed to pick cotton who breaks and enters his employer's cotton-house, and takes cotton therefrom to put in his basket, to secure compensation therefor as if he picked it, is guilty of burglary.—Fort's case, 82 Ala. 50. **Indictment** must aver an entrance.—Pines's case, 50 Ala. 153. Also that party committed theft or felony, or broke and entered with such intent.—Bell's case, 48 Ala. 684. And if to commit arson, must allege with intent willfully to set fire to, etc.—Pairo's case, 49 Ala. 25. Where the larceny is charged without alleging the intent in breaking, etc., it is necessary to prove the larceny; but if the intent to steal is alleged, and the larceny added, conviction may be had for the burglary, though acquitted of larceny. Bell's case, 48 Ala. 684; Murray's case, 48 Ala. 675; Wolf's case, 49 Ala. 359. May allege the consummation of the intent by an actual larceny of the goods. Murray's case, 48 Ala. 675; Wolf's case, 49 Ala. 359. What is an averment of grand larceny, and not of burglary.—Bell's case, 48 Ala. 684. When count charges burglary only, and when both burglary and grand larceny.—Ib. May be joined with grand larceny, but not subject to doctrine of merger.—Bell's case, Ib. 694. May be joined with petit larceny in same count.—Snow's case, 54 Ala. 138; Gordon's case, 71 Ala. 315; Borum's case, 66 Ala. 468. But not in different counts.—Adams's case, 55 Ala. 143; Barber's case, 78 Ala. 19. Ownership must be precisely laid and proved.—Beall's case, 53 Ala. 460. Properly laid in person having undisputed occupancy and possession.—Matthews's case, 55 Ala. 65. Also may be jointly laid in owner and occupier, if erected for their joint use.—Webb's case, 52 Ala. 422. But may, under the statute, be laid in any one or more of several partners, joint owners, or tenants in common. White's case, 72 Ala. 195; Williams's case, 67 Ala. 183. Insufficient to allege in a firm name, without naming individuals of the firm.—Davis's case, 54 Ala. 88. Also insufficient to allege ownership in the estate of a deceased person, though named.—Beall's case, 53 Ala. 460 (overruling, on this point, Murray's case, 48 Ala. 675, and Anderson's case, Ib. 665). May allege, in disjunctive, "dwelling-house, or a building within the curtilage of the dwelling-house, or shop, store, warehouse, or other building," etc.—Ward's case, 50 Ala. 120; Williams's case, 67 Ala. 183. But cannot describe the building as "a barn or stable," or as "a barn, house or building."—Horton's case, 60 Ala. 72. And for burglary in "shop," or "store" or "other building," the "other valuable things" must be described generally, and alleged to be "of value."—Neal's case, 53 Ala. 465; Williams's case, 67 Ala. 183; Kelley's case, 72 Ala. 244; Henderson's case 70 Ala. 23; Norris's case, 50 Ala. 126; Robinson's case, 52 Ala. 587; Webb's case, Ib. 422; Rowland's case, 55 Ala. 210; Matthews' case, Ib. 65; Hurt's case, Ib. 214; Stone's case, 63 Ala. 115; Pickett's case, 60 Ala. 77; Davis's case, 54 Ala. 88; Crawford's case, 44 Ala. 382. Strict correspondence as to proof of value not essential. Robinson's case, 52 Ala. 587. But "goods and merchandise" need not be averred to be valuable things.—Wicks's case, 44 Ala. 398. Averment that goods, etc., "were kept for use," etc., sufficiently means that they were so kept at the time. Henderson's case, 70 Ala. 23; Pond's case, 55 Ala. 196. Only structures of a temporary character require additional descriptive averment of being "specially constructed or made to keep such goods," etc.—Stone's case, 63 Ala. 115. **Indictment for burglary in a dwelling-house need not allege that goods, etc., were kept for use, etc.,** such words applying only to the buildings or structures named in the second clause of the section.—Potter's case, 92 Ala. 37; Gilmore's case, 99 Ala. 154. But **if unnecessarily so alleged, must be proved.**—Gilmore's case, 99 Ala. 154. **Must allege intent to steal or to commit some felony, or a completed larceny, or some felony actually committed.**—Barber's case, 78 Ala. 19. Averment that house entered belongs to "M.," whose **Christian name is unknown,** will support judgment after conviction, though the Christian name was or could have been known to the grand jury.—Jack-

son's case, 102 Ala. 167. For **burglary in a dwelling-house owned by wife** in which she and the husband lived, ownership may be laid in either.—Young's case, 100 Ala. 126. **Ownership may be laid in different persons in separate counts,** and a general verdict is good.—Towns's case, 111 Ala. 1. Indictment which alleges **burglary of smoke-house containing things kept for use,** etc., need not allege that it was within curtilage of dwelling.—Pressley's case, 111 Ala. 34. Indictment for **entering "sample-room" of a hotel** should show it was a dwelling, shop, store, etc., or that the goods were kept therein for sale or deposit.—Thomas's case, 97 Ala. 3. Indictment for **entering leased premises** should lay the ownership in the lessee rather than the owner of the fee.—Ib. Indictment following **Code form** for burglary is **not violated by further adding** "defendant feloniously took and carried away certain goods therefrom."—Walker's case, 97 Ala. 85. If **house owned by corporation** and occupied by naked agent or servant, ownership must be laid in corporation. Aldridge's case, 88 Ala. 113. Indictment for entering building of Perry Mason Shoe Co. should aver it was **a corporation or a partnership,** and set out names of partners, so as to show that defendant was not one of them.—Emmonds's case, 87 Ala. 12. Indictment for burglary may allege in one count that it was with **intent to steal or commit rape.**—Dismukes's case, 83 Ala. 287. Indictment which **fails to charge intent and fails to charge the asportation** sufficiently to constitute burglary is fatal as to both.—Barber's case, 78 Ala. 21. **Evidence:** A **smoke-house forty yards from the dwelling,** not in same inclosure, but in which family supplies are stored and used from, **may be within the curtilage** of the dwelling.—Wait's case, 99 Ala. 164. **Digging under smoke-house** which has no floor but earth, is sufficient breaking and entrance.—Pressley's case, 111 Ala. 34. Proof of **identity of goods stolen at time** of burglary.—Crane's case, 111 Ala. 45. **Goods taken from defendant,** alleged to have been taken at time of burglary, and also a vest alleged to have been worn by defendant before offense found near scene of action, properly introduced as evidence.—Walker's case, 97 Ala. 85. **Alibi;** burden of proof as to.—Towns's case, 111 Ala. 1. **Tracks:** Witness cannot state that tracks found near scene of action "correspond, in his opinion, with tracks of defendant," but can only state facts of correspondence and identification.—Livingston's case, 105 Ala. 127; Hodge's case, 97 Ala. 40; Riley's case, 88 Ala. 193; Busby's case, 77 Ala. 66; Young's case, 68 Ala. 569. Witness may testify he measured two sets of tracks and found them similar.—Gilmore's case, 99 Ala. 154. **Defendant's refusal to make tracks** cannot be used against him.—Cooper's case, 86 Ala. 610. But if **defendant voluntarily place his foot in the track,** state may prove that it fit, and he cannot then claim that his consenting to do this was a circumstance in his favor.—Potter's case, 92 Ala. 37. **Confessions:** Confessions made while in custody in response to statements by prosecutor "that if he got the money it would be best for him to tell about it, but not to own it if he did not get it," held voluntary.—Dodson's case, 86 Ala. 60. If defendant calls out part of confession, state may bring out all.—Ib. Confessions are prima facie inadmissible—they must be free from any influence, hope or fear, and this must be shown by state.—Banks's case, 84 Ala. 430; Owen's case, 78 Ala. 425. Though confessions be improperly obtained, if they disclose extraneous facts which will show the truth of the confession and tend to prove the commission of the crime, that part which relates strictly to the extraneous facts is admissible, but not the whole.—Banks's case, 84 Ala. 430. Admissibility and weight of confessions and acts of prisoner.—Mountain's case, 40 Ala. 344; White's case, 49 Ala. 344; Ward's case, 50 Ala. 120; Murdock's case, 68 Ala. 567. Uncorroborated confessions sufficient to convict.—White's case, 49 Ala. 344. Refusal by accused to permit his house to be searched without a warrant inadmissible against him.—Murdock's case, 68 Ala. 567. **Possession of stolen goods:** Recent unexplained possession of stolen goods, may not as matter of law raise presumption of guilt, yet it is competent evidence, and in connection with proof of flight, will authorize conviction of burglary.—Dodson's case, 86 Ala. 60; Crawford's case, 44 Ala. 45; Neal's case, 53 Ala. 465; Cooper's case, 87 Ala. 135; see also Murray's case, 48 Ala. 675. Explanation of possession made at time, as part of res gestæ, admissible.—Henderson's case, 70 Ala. 23. Corpus delicti having been proved, jury may infer guilt of defendant from his **recent possession of goods stolen** at time of burglary, if he has made contradictory statements as to how he acquired them.—Ross's case, 82 Ala. 65. **Variance:** Where house burglarized is alleged to be property of wife, and the evidence only shows that wife and husband lived together in the house, there can be no conviction, the law presuming it to be house of husband.—Jackson's case, 102 Ala. 167. **Verdict** may be general, when burglary and grand larceny charged in same or different counts, though only one punishment imposed.—Gordon's case, 71 Ala. 315; Bell's case, 48 Ala. 694. May be verdict for petit larceny, if alleged in same count with burglary.—Borum's case, 66 Ala. 468; Gordon's case, 71 Ala. 315. And a conviction of one offense is an acquittal of the other. Bell's case, 48 Ala. 694; Fisher's case, 46 Ala. 717. **Sentence** may be im-

prisonment in penitentiary or hard labor for two years, on verdict of guilty. Washington's case, 63 Ala. 189. See note to section 5412.

4418 (3787) (4344). **Burglary in railroad-car.**—Any person, who, in the night or day time, with the intent to steal, or to commit a felony, breaks into and enters any railroad-car upon or connected with any railroad in this state, in which any goods, merchandise, or other valuable thing is kept for use, deposit, or transportation, is guilty of burglary, and must, on conviction, be imprisoned in the penitentiary for not less than one, nor more than four years. (Form 22.)

Ownership of car must be alleged and proved.—Johnson's case, 73 Ala. 483. Car owned by railroad corporation must be laid and proved in company, not in stockholders.—Johnson's case, 98 Ala. 57. Proof that car was standing on track of railroad not sufficient.—Johnson's case, 111 Ala. 66. Proof of corporate existence.—Willingham's case, 104 Ala. 59.

4419 (3788) (4345) (3696) (150). **Possession of burglarious instruments, etc.**—Any person who has in his possession any implement or instrument designed and intended by him to aid in the commission of burglary or larceny in this state, or elsewhere, must, on conviction, be fined not less than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months. (Form 23.)

Davis's case, 87 Ala. 10.

CHAPTER 135.

CARRYING CONCEALED WEAPONS. 4420–4424.

4420 (3775) (4109) (3555) (15). **Carrying concealed weapons.** Any one, who carries concealed about his person a bowie-knife, or knife or instrument of like kind or description, or a pistol, or firearms of any other kind or description, or an air-gun, must, on conviction, be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. But the defendant may give evidence that, at the time of carrying the weapon concealed, he had good reason to apprehend an attack, which the jury may consider in mitigation of the punishment, or justification of the offense. (Form 26.)

Statute not unconstitutional; it does not prohibit, but merely regulates the carrying of arms.—Reid's case, 1 Ala. 612. **Weapon**: The "pistol" or "firearm" may be imperfect, and yet be a "firearm."—Atwood's case, 53 Ala. 508; see Evins's case, 46 Ala. 88. What imperfections in the pistol will exclude it from the purview of the statute.—Ib. Sufficient weapon, if all the separated pieces of a pistol which can be readily put together, are carried.—Hutchison's case, 62 Ala. 3. A broken handle, or mainspring, or want of tube, does not exclude pistol from the operation of the statute—it is not necessary to be a pistol that can be fired in the usual manner.—Redus's case, 82 Ala. 53. Also a knife, if not unlike a bowie-knife in all, but only in some essential particulars. Sears's case, 33 Ala. 347. **Concealment**: The true rule is whether it was concealed from ordinary observation, not whether a witness saw or did not see it, or could have seen it on closer examination—it may be concealed in the hand,

Ramsey's case, 91 Ala. 29; Jones' case, 51 Ala. 16; see also Street's case, 67 Ala. 88. **Carrying:** Weapon must be carried about the person in the sense of moving with the person; hence a conviction may be had for carrying in a hand-satchel suspended from the shoulders.—Warren's case, 94 Ala. 79. Or in a hand-basket carried on the arm.—Diffey's case, 86 Ala. 66. But not for carrying in saddle-bags while riding on horseback.—Cunningham's case, 76 Ala. 88. Nor for carrying under rug in bottom of buggy.—Ladd's case, 92 Ala. 58. Unlawful to carry pistol concealed within the curtilage of one's abode.—Harman's case, 69 Ala. 248. Or in the room of another person.—Owen's case, 31 Ala. 387. **Evidence:** It is admissible for witness to testify that "he saw something in defendant's pocket that looked like a pistol," or that he saw impression of the pistol through the clothing, but such evidence will not warrant the general charge for the state.—Cotton's case, 88 Ala. 168; Mayberry's case, 107 Ala. 64. Juries may be, and often are convinced beyond reasonable doubt, that the pistol was previously concealed, where proof shows that defendant was afterwards seen with a pistol, although no witness can testify that he had previously looked to see whether defendant had a pistol.—Farley's case, 72 Ala. 170. Evidence of concealed weapon obtained by **unlawful search** is admissible.—Scott's case, 113 Ala. 64; Shields's case, 104 Ala. 35; Scott's case, 94 Ala. 80; Chastang's case, 83 Ala. 29. Witness may testify that he saw a pistol on the defendant a short time before alleged time of carrying.—Dean's case, 98 Ala. 71. Declaration of defendant a short time before alleged carrying "that he was going to raise hell," inadmissible.—Ib. The act being continuous, evidence of concealment at more than one time and place is admissible, though if the carrying is continuous from one time to another there cannot be two convictions or trials.—Smith's case, 79 Ala. 257; Ladd's case, 92 Ala. 58; Dean's case, 98 Ala. 71; Etress's case, 88 Ala. 191. Witness cannot testify that he lived with defendant and worked with him, and that he did not own a pistol, on a charge of carrying a pistol when they were not together.—Gaither's case, 89 Ala. 62. **Good reason to apprehend an attack:** The only exception is "good reason to apprehend an attack," and officers, sheriffs, deputies and policemen are not exempt, unless within ground of exception. Reach's case, 94 Ala. 113; Scott's case, 113 Ala. 64. Defense that defendant was a watchman is not good if he was not on watchman's duty at time.—Bell's case, 100 Ala. 78. If defendant attempts to show that he expected an attack from "C.," alleged to be a dangerous man, state may show that he was a justice of the peace.—Bell's case, 100 Ala. 78. The right is coextensive only with the particular necessity, and ceases when that necessity ceases.—Eslava's case, 49 Ala. 355. Having reason to apprehend attack, or mere belief of attack by defendant, not founded on reasonable grounds, not sufficient; there must be "good reason to apprehend an attack."—Baker's case, 49 Ala. 350; Davenport's case, 85 Ala. 336; see also Collier's case, 68 Ala. 499; Berney's case, 69 Ala. 233; Shorter's case, 63 Ala. 129; Hardin's case, 63 Ala. 38. Proper charge when this is the only defense.—Hogg's case, 52 Ala. 2. Good reason to apprehend an attack at a dangerous time and place will not justify casual carrying weapon at safer time and place.—Chatteaux's case, 52 Ala. 388. Must be carried for defensive and not offensive purposes.—Shorter's case, 63 Ala. 129; Stroud's case, 55 Ala. 77. Defendant cannot prove that he was advised to arm himself.—Berney's case, 69 Ala. 233. Nor an offer by him to borrow $5.00 to buy a pistol.—Ib. No excuse that pistol was to take part in school exhibition.—Preston's case, 63 Ala. 127. Defendant's enemy having armed himself and searched for defendant, declaring his intention "to fix him when he did see him," held good reason to apprehend an attack.—Dooley's case, 89 Ala. 90. Court may charge jury to assess such a fine as they may deem necessary to suppress the evil.—Shorter's case, 63 Ala. 130; see also Chatteaux's case, 52 Ala. 388; McManus's case, 36 Ala. 293; Sullivan's case, 68 Ala. 525; Farley's case, 72 Ala. 170.

4421 (3776) (4110). **Same; brass knuckles and slung-shots.**—Any one, who carries concealed about his person brass knuckles, slung-shot, or other weapon of like kind or description, must, on conviction, be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

Indictment charging carrying brass knuckles or other weapon of like kind or description is sufficient, and will support a conviction on proof of carrying lead knuckles.—Bell's case, 89 Ala. 61. Good cause to apprehend an attack no excuse for carrying brass knuckles.—Bell's case, 89 Ala. 61.

4422 (3777) (4111). **Carrying rifle or shot-gun walking-cane.** Any person, who carries a rifle or shot-gun walking-cane, must, on

conviction, be fined not less than five hundred, nor more than one thousand dollars, and be imprisoned in the penitentiary not less than two years.

4423 (3778). **Given in special charge to grand jury; their duty.** The three preceding sections must be given in special charge to the grand jury; and it is their duty, if the evidence justifies it, to find and present an indictment.

4424 (3779) (4809) (4136) (586). **Indictment for carrying concealed weapons; proof.**—In an indictment for carrying concealed weapons, it is sufficient to charge that the defendant "carried concealed about his person a pistol, or other description of firearms," or a "bowie-knife, or other knife or instrument of the like kind or description," or other forbidden weapon, describing it, as the case may be; and the excuse, if any, must be proved by the defendant, on the trial, to the satisfaction of the jury. (Form 26.)

Bell's case, 89 Ala. 61.

CHAPTER 136.

COCK-FIGHTING. 4425, 4426.

Feb. 18, 1891. p. 1158, §1. **4425. Keeping cockpit; cock-fighting.**—Any person who keeps a cockpit, or who in any public place fights cocks, must, on conviction, be fined not less than twenty nor more than fifty dollars.

Ib. §2. **4426. Justice of peace has jurisdiction.**—Justices of the peace have jurisdiction of the offense defined in the preceding section.

CHAPTER 137.

COMPOUNDING FELONY.

4427 (4006) (4149) (3587, 3588) (46, 47). **Compounding felony.** Any person, who, having knowledge of the commission of a felony, takes, receives, or agrees to take or receive from another, any money, property, or other thing of value, to compound or conceal such felony, or to abstain from any prosecution therefor, must, on conviction, be fined not more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months. A prosecution and conviction may be had under this section, although the person guilty of the original offense has not been tried. (Form 29.)

Code form of indictment sufficient.—Watt's case, 97 Ala. 72.

CHAPTER 138.

CONSPIRACY. 4428–4430.

4428 (4007) (4152) (3591) (50). **Conspiracy to commit felony.** Any two or more persons, conspiring together to commit a felony, must each, on conviction, be fined not more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. (Form 30.)

See note to succeeding section.

4429 (4008) (4153) (3592) (51). **Conspiracy to commit misdemeanor.**—Any two or more persons, conspiring together to commit a misdemeanor, must each, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months. (Form 30.)

Conspiracy defined.—Murphy's case, 6 Ala. 765. Unlawful agreement is gist of offense, though nothing be done.—Cawood's case, 2 Stew. 360. To seduce a virtuous female.—Murphy's case, 6 Ala. 765. Agreement between a man and woman to commit adultery is not a conspiracy.—Miles's case, 58 Ala. 390. To commit misdemeanor is not merged into the offense, but indictment may be framed to convict of either.—Murphy's case, 6 Ala. 765. May be proved circumstantially without positive agreement or meeting of conspirators.—Johnson's case, 29 Ala. 62; Scott's case, 30 Ala. 503; Marler's case, 67 Ala. 66. Established by testimony of accomplice, if his statement connecting defendant with the offense is corroborated.—Marler's case, 67 Ala. 66. What said and done by one in presence of others, while committing the offense, admissible against all.—Smith's case, 52 Ala. 407. Motion in arrest of judgment allowable to one or more, in absence of others.—Covington's case, 4 Ala. 603. The conspiracy is a complete offense within itself, and no act in consummation thereof is necessary.—Thompson's case, 106 Ala. 67. A conspiracy in this state to commit a felony in another state is indictable.—Thompson's case, 106 Ala. 67. Indictment charging that defendants "conspired together to unlawfully take a thousand dollars in money, the property of J. H., from his person, and against his will, by violence to his person, or by putting him in fear, as to unwillingly part with it," is sufficient.—Ib. When declaration and conduct of one evidence against others.—McAnally's case, 74 Ala. 9; Williams's case, 81 Ala. 1; Amos's case, 83 Ala. 1; Johnson's case, 87 Ala. 39; Martin's case, 89 Ala. 115; Gibson's case, 89 Ala. 121; Tanner's case, 92 Ala. 1; Tally's case, 102 Ala. 25. Liability of each for acts of others.—Pierson's case, 99 Ala. 148; Ex parte Bonner, 100 Ala. 114; Ex parte Tally, 102 Ala. 25. Conspiracy must be established before responsibility ensues.—Turner's case, 97 Ala. 57; Bonner's case, 100 Ala. 114. Positive or direct proof not necessary to establish.—Martin's case, 89 Ala. 115; Gibson's case, 89 Ala. 121; Tanner's case, 92 Ala. 1; Jolly's case, 94 Ala. 19; Elmore's case, 110 Ala. 63.

4430. Conspiracy formed in this state to commit crime elsewhere indictable here.—A conspiracy formed in this state to do an act beyond the state which, if done in this state, would be a criminal offense, is indictable and punishable in this state in all respects as if such conspiracy had been to do such act in this state.

Thompson's case, 106 Ala. 67.

CHAPTER 139.

CONVICT SYSTEM.

ARTICLE 1.—ORGANIZATION; OFFICERS AND THEIR GENERAL DUTIES AND POWERS. 4431–4459.
2.—THE PENITENTIARY; HIRING AND HARD LABOR OF STATE CONVICTS. 4460–4519.
3.—COUNTY CONVICTS; HIRING AND HARD LABOR. 4520–4545.

ARTICLE 1.

ORGANIZATION; OFFICERS AND THEIR GENERAL DUTIES AND POWERS.

Feb. 18, 1895, p. 849, §1.

4431 (4556). **Board of inspectors of convicts; term of office.** There shall be appointed by the governor, a president of the board of inspectors, and two other inspectors of convicts, one of whom shall be a physician, who, together shall constitute the board of inspectors of convicts, and shall have general supervision and control of the state and county convicts; the term of office of the inspectors shall be for two years, and until their successors are qualified.

Ib. §§2, 28.

4432 (4557). **Powers and duties of president of board.**—The president of the board of inspectors shall superintend the management of the convicts, and all subordinate officers, persons, or guards. It shall be his duty to see that the laws in relation to convicts and the rules of the board of inspectors, are enforced; and his orders shall be obeyed by all contractors, officers, guards and convicts. He has the general oversight of all the officers and convicts and of the land and other property belonging to the several prisons; he may sell by order of the board any personal property not needed at any prison and cover the proceeds into the state treasury to the credit of the convict fund, and may order any convict transferred from one prison to another as he may think expedient.

Ib. §3.

4433 (4558). **Appointment and duties of clerks.**—There shall be appointed with the approval of the governor, by the president of the board of inspectors two clerks who, under his direction, shall keep the books and records pertaining to state and county convicts, and shall perform such other duties as may be required by the board.

Ib. §4.

4434 (4559). **President and clerks must reside at capital.**—The president of the board of inspectors and the clerks shall reside at the capital of the state, and the president of the board must be provided with an office in the capitol.

Ib. §5.

4435 (4560) (4542) (3841) (293). **Meetings of the board.**—The board of inspectors shall hold regular meetings at the office of the president of the board on the third Tuesday of each month of each year, and the president may call special meetings of the board at such time and place as he may think proper; he shall preside at all such meetings.

4436 (4561) (4543) (3842) (294). **Minutes of proceedings to be kept.**—The board of inspectors must keep or cause to be kept regular minutes of all their meetings and proceedings, which must be signed by them, and kept in the office of the president, subject to the inspection of any person. Ib. §6.

4437. Physician inspector; his duties; residence; reports.—The inspector who is a physician shall reside at such place as the governor may designate. He shall report monthly, and oftener if required, to the president of the board of inspectors, the condition, health and sanitary arrangement of the convicts, together with any recommendations as to any change necessary for the more humane treatment of state and county convicts; and it shall be the duty of such inspector to devote his whole time and services exclusively to the supervision and care of and practice upon the convicts. Ib. §20.

4438 (4572). **Seal of office.**—The governor shall prescribe the form and specifications of, and furnish the president of the board of inspectors with a seal of office, and pay for the same out of any moneys not otherwise appropriated. Ib. §17.

4439 (4573). **Governor has general superintendence.**—The governor shall have general superintendence and control of the inspectors, and of all matters relating to convicts, and see that the inspectors perform their duties; and there shall be made quarterly to him by the president, and as often as he may require, a report of the condition of the convicts, and of the work done by each officer; and the governor shall, from time to time, require the office of the president of the board to be examined, and its condition reported to him by the examiner of public accounts. Ib. §18.

4440 (4562) (4544) (3843) (292). **Inspectors must adopt rules for direction of penitentiary officers.**—The board of inspectors must, from time to time, establish rules and regulations for the direction of the officers having control of state or county convicts in the discharge of their duties, for the government and discipline of the convicts, and the custody and preservation of the public property; which rules and regulations must be submitted to the governor for approval, and may be modified or annulled by him. Ib. §7.

4441 (4563). **Must adopt rules to prevent inhumane treatment.** The board of inspectors shall adopt such rules, to be approved by the governor, as are necessary to prevent inhumane treatment, or cruel or excessive punishment of state and county convicts, and also to regulate the time and amount of work to be performed by them, and the manner of working them. Ib. §8.

4442 (4564). **Duty as to visiting places of confinement; monthly statements.**—One of the inspectors shall visit once in two weeks, and oftener if required by the governor, the several places of confinement of all convicts; and the visiting inspectors shall examine the food, clothes, quarters, bedding, provisions made for the sick and general treatment, and if he finds anything wrong, he shall point out the same to the officer in charge of the prison, and immediately notify the president of the board; and the president of the Ib. §9.

board, and each inspector, shall file monthly in the office a statement of the work done by him, and the condition of the convicts at the places visited during the preceding month; but the inspectors shall not be required to visit county convicts hired in the county where convicted, except when worked in mines or on railroads; and each inspector shall devote his whole time to the discharge of his duties.

Ib. §10. **4443** (4565). **Card showing date of expiration of sentence furnished each convict.**—The president of the board of inspectors shall furnish each convict, within a month after his confinement, a card, on which shall be written or printed, or partly written and partly printed, the date of such convict's conviction, and the term and expiration of his sentence.

Ib. §11. **4444** (4566). **Date of expiration of sentence furnished hirer.** Upon application, the date of the expiration of the sentence of each convict must be furnished in writing to the hirer by the judge of probate, or president of the board of inspectors, or other person or body, having charge of convicts by special regulations.

Ib. §12. **4445** (4567) (4555) (3857) (309). **Official correspondence and documents to be preserved.**—The president of the board of inspectors shall cause to be preserved certified copies of all his official correspondence with the governor, inspectors and other public officers, which, together with all books, vouchers, and documents relating to the office of the president and board of inspectors, shall be considered as public documents and kept on file in the office of the board of inspectors.

Ib. §13. **4446** (4568). **Record of convicts and accounts with contractors to be kept.**—In the office of the board of inspectors of convicts shall be kept a book, or books, in which shall be kept a record of all state and county convicts, showing the date of conviction, crime, sentence, county and court in which convicted, place and person to whom hired, and term and amount of hire, and such other information as the board may prescribe; and there shall be kept also in a well-bound book, or books, an account with each contractor for convicts, showing at all times fully and correctly the state of the accounts of each contractor; and there shall also be kept such other books as the board may deem proper.

Ib. §14. **4447** (4569). **Account with contractors made out monthly; settlement with auditor; when suit to be brought.**—On the first day of each month the president of the board shall cause to be made out by the clerk an account against each contractor, showing the number of convicts and the amount of hire due from each contractor for the past month, copies of which shall be furnished respectively to the contractors and the auditor. Within ten days after receiving such account, such contractors respectively shall settle and pay such accounts to the auditor; and the amount due by each shall be certified into the state treasury, and an account thereof shall be kept by the auditor in a book, or books, separate and distinct from other state accounts (as other accounts of public

moneys are kept); but when the contract prescribes other than monthly payments then the account thereof shall be made out under the direction of the president of the board, and settled by the contractor with the auditor, and certified into the treasury of the state, within ten days after the same is due, in all respects as herein provided; and if the contractor fails to settle within thirty days after receiving his account, the auditor shall notify the attorney-general, who shall at once bring suit for the amount due.

Ib. §15.

4448 (4570). **Inspectors report violations of law to solicitor; where tried.**—It shall be the duty of the president and of the inspectors to report to the solicitor of the circuit all violations of the law in regard to convicts that may come to their knowledge; and all indictments for the same shall be tried in the circuit court of the county where the offense was committed.

Ib. §16.

4449 (4571) (4546) (3845) (297). **Biennial report of inspectors to governor.**—The board of inspectors must, at least sixty days before the commencement of each session of the general assembly, make to the governor a report of the convict system during the two years ending the thirty-first day of August preceding such session. The report shall show the number of convicts, the offenses for which they were convicted, the number from each county, the number sentenced for life, and for different periods, the ages, race and sex; the names of all who have died, with the place and date, and the cause of death; the names of all who have escaped, with the date and place of escape, and the names of those recaptured and the dates; the number hired to each contractor, the residence of each contractor, when the contract expires, and in what labor they are engaged; the amount realized from hiring and expense of the system; what moral and religious instruction the convicts have received; and such other information and suggestions as the inspectors may think proper.

Ib. §19.

4450 (4574). **Governor to transmit report to general assembly.** It shall be the duty of the governor to transmit to the general assembly, immediately upon its assembling, full and complete printed reports made to him by the board of inspectors, and such other and further information as he may deem proper.

4451 (4577). **Chaplains; appointment, duties and term of office.** Two chaplains shall be appointed by the inspectors, who shall devote their time to the moral improvement and religious instruction of convicts. Their term of office shall be for two years.

Ib. §22.

4452 (4579). **Guards, warden and other officers; license required.**—Each prison or camp shall be under the control of a warden and such other persons as may be necessary, who shall be employed and paid by the contractor, and may be discharged at any time by the president of the board; but no person shall be employed to guard or control convicts without a license from the president of the board to act in such capacity.

4453 (4580). **Power to pursue and arrest without a warrant.** Every officer and guard, regularly licensed and sworn, shall have power to pursue and arrest any escaped convict in any county of

this state without a warrant; and he shall have the same authority as a sheriff to summon persons to assist in making such arrest, or to protect such convict from any violence after arrest.

Ib. §90. **4454. Officers and guards have powers of policemen.**—Every officer and guard at any prison has the power of a policeman, and may arrest any person who intrudes upon the premises, or makes a disturbance near the prison, and take him before any magistrate of the county, by whom he may be fined ten dollars and the costs.

Ib. §24. **4455** (4581). **Exempt from road and jury duty.**—All guards, and other persons having control of convicts, shall be exempt from working on the public roads, and from serving on juries.

Ib. §25. **4456** (4582). **Oath of office.**—Every officer and guard shall, before entering on the duties of his office, take and subscribe before some officer authorized to administer oaths the following oath: "I, —— ——, do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the State of Alabama, so long as I remain a citizen thereof; that I will faithfully execute and discharge all the duties required of me as —— (designating the office), and observe all the rules and regulations prescribed for the government of convicts, so far as concerns my office; and will, in no case, ill-treat or abuse any convict under my charge or control, nor inflict upon him any other or greater punishment than may be prescribed by said rules and regulations. So help me God."

Ib. §26. **4457** (4583). **Salaries and expenses of officers.**—The salary of the president of the board of inspectors shall be eighteen hundred dollars per annum, the inspector who is a physician, seventeen hundred dollars per annum, and the other inspector fifteen hundred dollars per annum, and their traveling expenses while absent from their place of residence on official duty; the salary of the chief clerk of the board shall be fifteen hundred dollars per annum, and of the associate clerk, twelve hundred dollars per annum; of the chaplain or chaplains, in the aggregate, one thousand dollars per annum; and each of said officers shall be reimbursed his traveling expenses, when absent from his residence, incurred in the actual discharge of his official duty; and all accounts for expenses shall be itemized and verified by oath.

Ib. §27. **4458** (4584). **How salaries and expenses paid.**—The salaries and expenses authorized by this article shall be paid from the hire and proceeds of the labor of state convicts, and from the income, rents and profits of land or property pertaining to the convict system, and all accounts for salary or expenses of every sort must be approved by the governor before payment, and so much of said income as may be necessary each year is appropriated for such purpose.

Ib. §88. **4459. Impeachment of inspectors.**—For malfeasance or misfeasance in office, the president of the board of inspectors, or either inspector, may, by order of the governor, to the attorney-general, be impeached before the supreme court who shall provide by rules for

trial of such impeachment, and, upon conviction, may be removed or suspended from office.

ARTICLE 2.

THE PENITENTIARY; HIRING AND HARD LABOR OF STATE CONVICTS.

4460. Penitentiary under the control of officers appointed by inspectors.—Each prison or penitentiary belonging to the state shall be under the control of such officers as the board of inspectors shall think necessary. They shall be appointed by the president of the board and their term of office and compensation shall be fixed by the board of inspectors. The board shall provide by rule how such officers shall be removed. But such appointment and compensation shall be subject to the approval of the governor who shall also have power to remove such officers. Feb. 18, 1895, p. 819, §21.

4461 (4609). **Temporary confinement of convict pending removal.**—When any convict is sentenced to the penitentiary, the judge of the court in which sentence is had shall order such convict to be confined in the nearest secure jail; and the clerk of the court shall at once notify the president of the board of inspectors of the jail where such convict is confined, and forward to him a copy of the judgment-entry and sentence in the case, and inform him if any special care be necessary to guard such convict; and thereupon the president of the board shall direct where such convict shall be taken for confinement or hard labor. Ib. §29.

4462 (4610). **Sheriff delivers convict to agent of board.**—The sheriff having in his custody any person sentenced to the penitentiary, shall deliver such convict to the person who presents the written order of the president of the board of inspectors, and shall take from such person duplicate receipts upon blanks to be furnished by the board of inspectors, containing a descriptive list of such convict, one of which he shall retain, and the other he shall forward to the board of inspectors. Ib. §30.

4463. How state convicts must be hired and employed.—The state convicts shall be hired or employed at such labor and in such places and under such regulations within the state as may be determined by the board of inspectors, with the approval of the governor, having in view the end of making the system self-sustaining as far as consistent with the humane treatment of the convicts. Ib. §31.

4464 (4612) (4567) (3869) (321). **Convicts confined in jail en route to penitentiary; duty of jailers.**—It is the duty of all jailers, on demand of the officer in charge of any convict being conveyed to the penitentiary, to receive and safely keep such convict for the legal charge of feeding prisoners, whenever such officer may deem it necessary to have them secured for the night, or for any longer time they may be necessarily detained. Ib. §33.

4465 (4613) (4574) (3876) (328). **Record of convict's history and description made.**—It is the duty of the president of the board Ib. §34

of inspectors, upon the reception of any convict into the penitentiary, to take his height, his name, age and complexion, color of his hair and eyes, the place of his nativity, the county in which he was convicted, the nature of the crime and the period of imprisonment; all of which, together with the statement of the time when such convict was received, must be entered upon a permanent record. The baggage and person of every convict must be carefully searched, and every instrument taken therefrom by which he may effect his escape.

Ib. §35. **4466** (4614) (4575) (3877) (329). **Effects of convict taken charge of.**—The officer in charge of any prison or camp must take in charge any property or money or other thing of value in the possession of any convict at the time of the delivery of such convict to him, and shall pay or deliver the same to such person as the convict may in writing direct, or to the convict on his discharge, or to his personal representative in case of his death previous thereto; and should no personal representative be appointed within six months after his death, then into the state treasury.

Ib. §41. **4467** (4620) (4508) (3808) (260). **Two or more convictions.** When a convict is sentenced to imprisonment in the penitentiary on two or more convictions, the imprisonment on the second, and on each subsequent conviction, must commence at the expiration of the imprisonment on the preceding conviction.

Ib. §42. **4468** (4621) (4571) (3873) (325). **Removal of convict on reversal of judgment.**—When any judgment of conviction is reversed and the cause remanded, after the convict has been conveyed to the penitentiary, he may be removed to the county in which he was tried, by the sheriff of that county, or his deputy, in the same manner in which he was conveyed to the penitentiary; and all the provisions of this Code in respect to authority, duty and compensation of officers and escapes, or attempts to escape, by convicts, are applicable to such removal.

Ib. §43. **4469** (4622) (4572) (3874) (326). **Imprisonment on commuted sentence.**—The president of the board of inspectors must also receive into the penitentiary, on the written order of the governor, any convict whose sentence has been commuted, according to law, to imprisonment in the penitentiary, and must confine such person according to the terms of the commutation, and the rules and regulations established by law; and if the governor shall so direct, the cost of conviction in such case must be paid as in case of sentence to imprisonment in the penitentiary.

Ib. §44. **4470** (4623) (4573) (3875) (327). **United States prisoners; account to auditor.**—The president of the board of inspectors must receive into the penitentiary all convicts sentenced to imprisonment therein by any court of the United States held in this state, and must safely keep and employ them according to the rules and regulations of the institution until the expiration of the term for which they are sentenced, or until they are otherwise discharged by law; and

he must account to the auditor for all moneys received for the support of such prisoners.

4471 (4625). **Prison must be approved.**—Each contractor shall keep his convicts in a prison which has been approved by the board of inspectors. Ib. §46.

4472 (4633) (4592) (3894) (346). **Punishment of convicts.**—No convict must be punished in any other way than is provided by the board of inspectors. Ib. §51.

4473 (4634) (4595) (3897) (349). **Insane convicts.**—The names of all convicts who, in the opinion of the physician, have become insane, must be forthwith reported by him to the president of the board of inspectors, who shall immediately cause such convict to be removed to the hospital, and must also report their names to the governor, in order that proper steps may at once be taken for their removal.

4474. Reformatory.—All state convicts under sixteen years of age shall be separated and worked apart, as far as practicable, from all other convicts, at a place to be designated by the board of inspectors as a reformatory, which shall be managed under such rules as the board of inspectors may prescribe, keeping in view their moral and intellectual improvement. Such reformatory must be located on property owned by the state. When any convict confined in the reformatory shall arrive at the age of sixteen years, or shall show by his conduct that he is not benefited by his confinement in the reformatory, he may be transferred to other employment at another place in the discretion of the board of inspectors. Feb. 18, 1895, p. 849, §53.

4475 (4644, 4645). **Contracts for the hire of convicts.**—All contracts for the hire of convicts shall be prepared by or under the direction of the attorney-general, and be executed in triplicate, each contractor signing each of the triplicates, as also the president of the board of inspectors, and each of such triplicates must bear the approval of the governor; one of such parts shall be retained by the contractor, one shall be kept in the office of the president of the board of inspectors, and the third filed in the office of the state auditor; and each contract must contain a provision that the president of the board of inspectors may terminate the same at any time with the approval of the governor, and the governor may terminate the same without assigning any reason. It is the duty of the governor to transmit to the general assembly immediately, if in session, or so soon thereafter as it may convene, printed copies of all contracts for hiring out convicts, together with copies of the bonds for the faithful performance of such contracts. Ib. §61.

4476 (4648). **Not less than fifty hired to one person or kept at one prison; violation misdemeanor; exception.**—Not less than fifty state or county convicts shall be hired to any one person or kept at one prison, and none of those hired to any person must be related to him by consanguinity or affinity, and they shall be governed, worked and guarded as prescribed by the rules and regulations for working penitentiary convicts outside the walls. But when convicts are Ib. §64.

worked in the county where convicted, less than fifty may be worked in one place.

Ib. §62. **4477** (4646). **When and at what occupation convicts let by contract may be worked.**—No convict must be worked at a different place or occupation than that expressed in the contract, except upon the recommendation of the board of inspectors, stating the reasons therefor, and approved by the governor; nor shall any convict be rehired or placed in the keeping or control of any other person than the contractor, except upon recommendation of the board of inspectors, approved by the governor.

Ib. §63. **4478** (4647). **Convicts classed.**—Convicts must be classed or tasked if hired to work in mines, and may be if hired to work elsewhere; but all hiring hereafter made must be per capita.

Ib. §69. **4479** (4653) (4586) (3888) (340). **Convicts allowed to work for themselves.**—Convicts may be allowed to work for themselves after the performance of their daily tasks, in such manner as may be prescribed by the rules of the board of inspectors, and the proceeds of such labor shall be disposed of as the board shall provide by rule.

Ib. §77. **4480** (4661). **Convicts shall not be permitted to run at large.** Hirers of convicts shall not suffer or permit any convict under their control to go at large at any time during the term for which the convict was sentenced, but shall keep every convict safely confined or attended by a sufficient guard. But the board of inspectors, as a reward for good conduct, may permit a convict to go about the premises of the person hiring him, without a guard.

Ib. §79. **4481** (4663) (4547) (3846) (298). **Removal in case of epidemic.** The inspectors, with the approval of the governor, may cause the convicts to be removed to such place of security within the state as they may deem expedient whenever the prevalence of any epidemic, infectious or contagious disease, or any other urgent necessity may render such removal proper; taking all necessary precautions to ensure the safe-keeping of the convicts, and to prevent escape when removed.

Ib. §84. **4482. Female guards.**—The board of inspectors shall provide female guards for female convicts.

Ib. §86. **4483** (4615) (4579) (3881) (333). **Clothing of convicts.**—All convicts must be clothed during the term of their imprisonment in a comfortable manner in coarse and cheap clothing made in a uniform and peculiar style so as to distinguish them from other persons; the number of suits, style and material to be determined by the board of inspectors.

Ib. §88. **4484** (4617) (4581) (3883) (335). **Diet.**—The diet of the convicts in quantity and quality must be such as may be directed by the board of inspectors, and shall be sound and wholesome.

Ib. §87. **4485** (4616). **Bibles.**—The president of the board of inspectors, with the approval of the governor, may procure a sufficient number of Bibles and other religious and improving reading-matter for the convicts, not to exceed in cost five hundred dollars in any one year,

and it shall be the duty of the chaplain to distribute the same among the convicts.

4486 (4618) (4583) (3885) (337). **Spirituous liquors.**—No spirituous or intoxicating liquors must, under any pretense, be introduced into the penitentiary, or into any convict prison or camp, except such as may be necessary for the hospital department.

4487 (4619). **Holidays.**—Convicts sentenced to the penitentiary or to hard labor for the county shall not be required to work on Sunday, Christmas day, the fourth day of July, or on Thanksgiving day. Feb. 18, 1895, p. 849, §40.

4488 (4637) (4605) (3907) (359). **Escaped convicts; reward for apprehension.**—Whenever any convict escapes, it shall be the duty of the president of the board of inspectors to take all proper measures for his apprehension, and for that purpose he will forthwith communicate to the governor the fact of such escape, the time when, and the circumstances under which it was effected, together with a particular description of the convict, his age, size, complexion, color of hair and eyes, in what county convicted, and for what offense and when; and the president of the board of inspectors shall, with the approval of the governor, offer a reward, not exceeding four hundred dollars, for the apprehension of such state convict, to be paid out of the proceeds of the labor of convicts in the state treasury. But no warrant shall be issued for the payment of any such reward unless there is filed in the office of the auditor the certificate of the president of the board of inspectors that such convict has been recaptured and restored to custody, with an indorsement thereon by the governor ordering the reward to be paid. Ib. §55.

4489 (4654). **Corporal punishment of convicts; record of same kept.**—No cruel or excessive punishment shall be inflicted on any convict, and no corporal punishment of any kind shall be inflicted except as it shall have been previously prescribed by the rules of the board of inspectors and of which the convict shall have been notified, and such punishment shall be inflicted only by the party authorized by the president of the board of inspectors to inflict it. And the person authorized by the president of the board of inspectors to inflict punishment shall keep a well-bound book, to be known as the "record of punishments," in which he shall record all punishments, of whatever character, inflicted on convicts, giving the name of the convict punished, offense, date, character, and exact extent or quantity of punishment; and it shall be the duty of the president of the board to carefully examine this record at least once in each month. Any false entry in such record, or any failure to make entry therein, as required by this section, is a misdemeanor. Ib. §70.

4490 (4655). **Convict exempt from certain labor; confinement.** No convict shall be required to perform any labor or task for which he has been declared unfit or incapable by the physician inspector; nor must he be confined in barracks, cells or compartments pronounced by the inspectors to be unhealthy or unfit for his accommodation. Ib. §71.

Ib. §72. **4491** (4656). **When shackled.**—Shackles and chains shall be placed on and worn by convicts only by consent of an inspector.

Ib. §73. **4492** (4657). **Physically disabled convict must not be hired; removal from work injurious to health.**—It shall be unlawful for the inspectors, or any other person or officer having charge of the hiring of either state or county convicts, to hire any convict who is not physically able to perform such work to be worked in mines; and whenever a convict is hired to be worked in mines, and subsequently it is made to appear that such work is injurious to the health of the convict, such convict must be removed from such mines and put to some other kind of hard labor.

Ib. §74. **4493** (4658). **Felons and misdemeanants not worked or confined together; nor males and females; nor white and black.**—It shall be unlawful to work together, or to confine in the same room or compartment, any convict who has been sentenced to hard labor for the commission of a misdemeanor not involving moral turpitude, with any convict sentenced for the commission of a felony; and it shall be unlawful for white and colored convicts to be chained together or to be allowed to sleep together; and it shall be unlawful to chain together or to confine together in the same room or compartment male and female convicts. Whenever in the judgment of the governor and the board of inspectors it is practicable to do so, arrangements shall be made for keeping white and colored convicts at separate prisons and they shall not be allowed to be kept at the same place.

Ex parte Buckalew, 84 Ala. 460; Ex parte White, 81 Ala. 80; Ex parte Crews, 78 Ala. 457.

Ib. §45. **4494** (4624) (4589) (3891) (343). **Prison management not to be discussed in presence of convict.**—No officer, or person holding any appointment, the duties of which are to be discharged in connection with the convict system, must say anything in relation to the management of any prison in the presence of any convict, except it be to direct him in his duty, or to admonish him for delinquency.

Ib. §50. **4495** (4643). **No officer must be interested in profits of convict labor.**—No inspector, physician of convicts, state, county, or municipal officer, or any officer or guard who has the charge, control, or direction of convicts must be in any manner whatsoever interested in the work or profit of the labor of any convict, nor shall receive any gift, gratuity, or favor of a valuable character from any person interested in such labor.

Ib. §68. **4496** (4652). **Nor accept other employment.**—No officer of the state shall accept from any person or corporation interested in convict labor, any employment nor receive any compensation for services rendered to such person or corporation.

Ib. §67. **4497** (4651). **Provision for disabled convict; contracts must secure the same.**—When a convict, without fault on his part and while working out his sentence, receives personal injuries permanently disabling him from earning a living, the board of inspectors shall have power to make provision for his support until the expira-

tion of his sentence, at a cost not to exceed eight dollars a month. And it shall be the duty of the president of the board of inspectors to insert a clause in every contract of hiring, fixing a liability on the contractor to the state for any amount thus expended for the support of such convict so disabled until the termination of the contract. But nothing herein contained shall bar the right of such convict to bring his action against the contractor or other person who may be legally liable to him for damages on account of such injuries.

4498. Inspectors may contract for hire of convicts.—The board of inspectors may, with the approval of the governor, make contracts for the hire of the labor of convicts by the day, month, or year, or term of years, the state in such cases controlling and supporting the convicts. Ib. §83.

4499 (4642) (4537). **Not to be hired to relative.**—In no case shall any convict be hired to any person related to such convict either by consanguinity or affinity within the fifth degree, or to any person hostile to such convict or of inhumane disposition. Ib. §59.

4500 (4635) (4597) (3899) (351). **Convict provided with clothing and money when discharged.**—Each convict, at the expiration of his term of confinement, must be discharged from the penitentiary, and must be furnished with a decent suit of clothes and with money sufficient to enable him to reach his destination, not exceeding ten dollars; but if any convict is sick at the time his term expires, he must not be discharged except at his own request. But if such convict is charged with the commission of any other criminal offense, he must be delivered to the proper sheriff or officer to answer such charge, under such rules and regulations as may be prescribed by the board of inspectors. Ib. §52.

4501 (4639) (4608) (3910) (362). **Regulations to be printed for information of convicts.**—Such of the regulations as are provided by this article, with all others hereafter adopted by the general assembly or by the inspectors with the approval of the governor, as it may be necessary that convicts should know, and the sections of this Code relative to escapes by convicts, must be printed so as to be conveniently read and set up in each workshop and cell in a conspicuous place. Ib. §57.

4502 (4638) (4607) (3909) (361). **Confinement in penitentiary presumptive evidence of legal conviction.**—On the trial of any convict for any offense committed within the penitentiary, the fact of confinement in the penitentiary shall be presumptive evidence of a legal conviction and sentence of imprisonment, and a copy of the transcript of the conviction and sentence filed with the president of the board of inspectors and certified by him to be correct, shall be received as evidence of such conviction. Ib. §56.

4503 (4628) (4609) (3911) (363). **Service of civil process on convict.**—When any suit is brought against any convict who is imprisoned in the penitentiary, the summons or subpœna must be delivered to the president of the board of inspectors, who must hand a Ib. §47.

copy to the convict and return the original by mail or by private conveyance to the proper court, indorsing on the envelope the title of the suit and the character of the process; and any mesne process which it may be necessary to issue in the progress of any suit may be served in like manner; and if no appearance is entered for the convict, the court must require the plaintiff to prove his demand or cause of action.

Ib. §48. **4504** (4629) (4610) (3912) (364). **How answer of convict taken to bill in chancery.**—When any convict in the penitentiary is made a defendant to any suit in chancery and his answer to the bill is required, a commission must be issued by the register of the court in which the suit is pending directed to the inspectors of the penitentiary, and authorizing and commanding some one of them to take the convict's answer. If the convict will voluntarily answer the bill, he may be allowed the aid of counsel to prepare his answer, at such convenient times as may be directed by the inspector executing the commission; and the answer must be sworn to before the inspector taking the same, and be returned by him, with the commission, to the proper court. But if the convict refuses or neglects to answer, for thirty days after he is required by the inspector to answer, the inspector must return the commission, and certify thereon such failure or neglect to answer; after which a decree pro confesso may be entered against the convict, unless the chancellor, for good cause shown, allows him further time to answer.

Ib. §49. **4505** (4630) (4613) (3915) (367). **Testimony in civil suits.**—The testimony of convicts may be taken in civil suits on interrogatories and notice as in other cases of taking testimony by interrogatories, the commission being directed to the inspectors and executed by any one of them, and the convict's testimony being taken on oath and returned with the commission as in other cases.

Has no reference to competency.—P. & M. Ins. Co. v. Tunstall, 72 Ala. 142.

4506 (4631) (4611) (3913) (365). **Testimony for state in criminal cases.**—The presiding judge of any circuit or city court, having reason to believe that the testimony of any convict serving a sentence in the penitentiary, or to hard labor for the county, is necessary in any criminal prosecution by the state, and that other evidence cannot be obtained on behalf of the state, may order a writ to be issued by the clerk, commanding the president of the board of inspectors to have the convict before the court, on a specified day, to give testimony in the particular case for the state; and the president must have the convict before the court on a specified day, according to the mandate of the writ, employing a trustworthy deputy, with a sufficient guard, to convey such convict to the court; and after he has testified, the convict must be forthwith returned to the custody from whence he was brought, but notice must be served on the president of the board of inspectors at least one week before the day appointed to have the witness in court.

Ib. §50. **4507** (4632) (4612) (3914) (366). **Fees, guards, escapes, etc., on such removal; receipt of prisoner by sheriff.**—For conveying any

convict under the provisions of the preceding section, the president of the board of inspectors is entitled to the actual expenses incurred in such removal, including the hire of necessary guards and their expenses; the guards and the convict are subject to the same liabilities and penalties for an escape, or attempt to escape; the sheriff or jailer of the county must, on demand of the officer having charge of the convict, receive and safely keep such convict in the county jail during his attendance on the court, or while delayed in passing through the county, and is entitled to the usual legal charge for feeding prisoners.

4508 (4664). **Inspectors have authority to inquire into treatment of convicts.**—The inspectors shall have authority to summon, swear and examine witnesses as to any matter concerning the management and treatment of convicts; and the president of the board or an inspector may administer the oath of office to guards and employes, and they may administer oaths as to the correctness of any account or statement in regard to the convict system. Ib. §80.

4509 (4660). **Termination of contract; convicts to be delivered up.**—Any contract for the hire of convicts may be terminated for cause by the president of the board of inspectors with the approval of the governor, or may be terminated at any time by the governor without assigning any reason therefor; and upon notice of such termination the contractor must forthwith deliver all convicts held by him under such contract to the president of the board of inspectors, or the court of county commissioners, or their agents, as the case may be. Ib. §§65, 76.

4510 (4662). **Contractor to account for escapes.**—The contractor or hirer of convicts shall pay two hundred dollars to the state for each convict who escapes, whether such escape is due to negligence or not, which amount shall be refunded without interest upon the recapture of such convict, less the amount paid by the state as a reward for such recapture. Ib. §78.

4511. Costs of conviction; items to be paid.—Whenever a defendant is convicted of a felony and sentenced to imprisonment in the penitentiary, the clerk of the court in which the conviction is had must make out a full and complete bill of costs in the case, which shall contain the following items and no others: Clerk's fees for issuing subpœnas for state witnesses, issuing capias, docketing, continuances, entering recognizance, trial, entering judgment of conviction, entering sentence, record for supreme court, certifying same, final record, recording indictment; sheriff's fees for executing warrant of arrest, approving bond or undertaking, serving subpœnas for state witnesses, committing prisoner, summoning jury in capital case; state witnesses' fees, which are fixed at fifty cents per diem before the committing magistrate, and fifty cents per diem before the court of conviction, and three cents per mile for each mile traveled to and from the court of conviction; but no witness shall have fees in more than one case on the same day; and costs of committing magistrate and constable on preliminary trial, both together Ib. §84.

not to exceed five dollars. The fees charged in every such case must be uniform and as provided in this Code, any local or special law to the contrary notwithstanding. And when the conviction is secured by a solicitor other than a solicitor who is paid a salary by the state, such bill of costs shall also include the solicitor's fee as provided in this Code.*

On joint conviction of two or more defendants, each liable for the entire costs, though but one payment can be enforced.—Dawson v. Sayre, 80 Ala. 444. Value of stolen property not included.—Skinner v. Dawson, 87 Ala. 348.

Ib. §85. **4512. Clerk must swear to bill of costs and forward to presi-**

*An act approved February 18, 1897 (Pamph. Acts, p. 1532), entitled "An act to provide for the payment out of the convict funds for certain items of costs in felony cases, to fix the amount of said items, to prescribe the extent to which such costs will be paid, and the manner of paying them," is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That whenever a defendant is convicted and sentenced to the penitentiary, the following items of costs in the case shall be paid out of the convict fund, to the extent and in the manner hereinafter prescribed, to wit: For issuing each capias or warrant (once), fifty cents; docketing cause, ten cents; issuing each subpœna for state's witnesses, twenty-five cents; each undertaking, or recognizance, and entering same, fifty cents; trial, fifty cents; entering judgment, twenty-five cents; final judgment, twenty-five cents; record for supreme court (per hundred words), fifteen cents, not to exceed three dollars and fifty cents; making final record (per hundred words), fifteen cents, not to exceed in all two dollars and fifty cents; making transcript and certificate thereof (per hundred words), ten cents, not to exceed five dollars; entering forfeiture against defendant, fifty cents; sheriff's fees, executing each warrant or writ of arrest, two dollars; approving bond, one dollar; serving each subpœna for state witnesses, fifty cents; for committing prisoner to jail, one dollar; for summoning jury in capital cases, three dollars, state witnesses' fees, which are fixed at seventy-five cents per diem before the grand jury and seventy-five cents per diem before the court of conviction, and five cents per mile for each mile traveled to and from the grand jury and court of conviction, but no witness shall be entitled to fees in more than one case on the same day; cost of committing magistrate and constables or preliminary trial, both together not to exceed five dollars; and when the conviction is secured by a solicitor other than a solicitor who is paid a salary by the state, or when the solicitor is paid a salary by the county, such bill of costs shall also include the solicitor's fee which is now, or may be allowed by law; *Provided*, that the surplus money paid into the state and county treasuries arising from the solicitors' fees after the solicitors and their assistants have respectively been paid the amounts allowed them by law, shall be paid into the fine and forfeiture fund of the respective counties in direct proportion to the amount received from the convictions respectively.

"SEC. 2. *Be it further enacted*, That the whole costs paid in any one case shall not exceed one hundred and fifty dollars.

"SEC. 3. *Be it further enacted*, That, presently, after such conviction, the clerk of the court in which the conviction is had, shall make out a bill of the costs in the case, containing no items not enumerated in section 1 of this act; he shall make oath to the correctness of each item of said bill, and that the same is a legal charge against the defendant; he shall forward the bill of costs to the president of the board of inspectors of convicts, or the officer discharging his duties, who shall carefully examine the same, and, if found correct, he shall request the auditor in writing to draw his warrant upon the treasurer for the payment of said bill to said clerk out of the convict fund. *Provided*, that no costs shall be paid, until the convict has been delivered to the penitentiary officials, and, where a convict is sentenced in more than one case, the costs in the succeeding cases shall not be paid, until he has served the preceding sentences.

"SEC. 4. *Be it further enacted*, That costs shall be paid out of the convict fund, only as prescribed in this act, without regard to special laws for particular counties; but nothing in this act shall be construed to deprive any officer, herein enumerated, of any claim he may have upon the county of his residence, or upon any fund thereof, for the performance of services rendered in his official capacity, nor deprive any county, paying the salary of the solicitor therein, of any claim upon the convict fund, for the solicitor's fees, as provided in sections 1 and 2 of this act.

"Approved February 18th, 1897."

dent of board of inspectors; limit; how paid.—The clerk shall make oath to the correctness of said bill before some officer authorized by law to administer oaths, and that each item of said bill is true and correct, and is a just charge against the defendant. He shall forward said bill of costs to the president of the board of inspectors who shall carefully examine the same, and, if found correct, shall request the auditor to draw his warrant on the treasurer in favor of the clerk for the amount of said bill; but in no case shall the amount paid in any one case exceed the sum of one hundred and fifty dollars, exclusive of the solicitor's fee. No costs shall be paid until the defendant is received into the penitentiary, and, when the defendant is convicted in two or more cases, the costs in the succeeding cases shall not be paid until he has served out the preceding sentence. All cost bills now due and payable out of the convict fund shall be registered in the office of the president of the board of inspectors and shall be paid according to priority of date of sentence.

4513. Costs of appeal to supreme court; when paid by the state.—When an appeal is taken to the supreme court from the judgment of conviction in any criminal case in which the defendant has been convicted of a felony and sentenced to imprisonment in the penitentiary, and the case is affirmed or the appeal dismissed, the clerk of the supreme court shall make out a statement of the costs of appeal in the supreme court, not including the library tax, and not including the fee of the attorney-general, and present the same to the auditor who shall draw his warrant on the treasurer for the amount thereof, not to exceed fifteen dollars in any case, payable out of the convict fund. Feb. 1891, p. 1192.

4514. Permanent improvement of state lands.—The board of inspectors may, with the approval of the governor, cause to be made such improvements on any of the land owned by the state as may tend to the benefit of the convict system and enable them to work such convicts as they may think proper at farming or other employments. Feb. 18, 1895, p. 849, §81.

4515. Renting out state lands.—Such of the lands owned by the state as are not needed for the use of the convict system may be rented out by the president of the board of inspectors with the approval of the board. Ib. §82.

4516. Permanent improvement of the convict system.—Any part of the net income from the hire or labor of state convicts may, with the approval of the governor, be applied to permanent improvements or manufacturing at the prison at Speigener's or elsewhere, looking to the more permanent employment of the convicts of different classes. Ib. §82.

4517. Acquirement of land by condemnation.—The governor may cause proceedings to be instituted in the name of the State of Alabama for the acquirement by condemnation of any lands, right of way, or material needed for the use of the penitentiary, or the maintenance or operation of the convict system of the state, the purchase of which may be authorized by law. Such proceedings must be had Ib. §86.

in the probate court of the county in which such lands or other property, or a material part thereof, may be situated, and prosecuted in the name of the State of Alabama, in accordance with the provisions of this Code providing for the condemnation of lands for public uses, so far as the same may be applicable, except that the application need not be certified, nor shall security for costs be required of the state.

Ib. §66. **4518** (4650). **Venue of suits in which the convict system is interested; party plaintiff.**—All suits wherein the convict system, or the state on account of the convict system, is interested, must be brought in Montgomery county in any court having jurisdiction of the amount involved, except suits to condemn property under the preceding section which must be brought in the county where the property sought to be condemned is located. And if on the trial of any case in any county it is suggested by the president of the board of inspectors that the state is interested on account of the convict system, such cause must be transferred to the proper court of Montgomery county. And all suits must be brought in the name of the state, except that in suits for hire of county convicts the suits shall be brought in the name of the county interested, and in the county where conviction was had.

4519 (4636) (4601) (3903) (355). **Convicts committing offense in penitentiary, confined until trial.**—Any convict who commits any one of the offenses prohibited by sections 4859 (3730), 4347 (3752) and 4707 (3998), or any other public offense, during his confinement in the penitentiary, must be confined therein like other convicts, until his trial takes place, but, after the expiration of his former term of confinement, if the subsequent offense is bailable, he may be discharged from confinement, on giving sufficient bail for his appearance.

ARTICLE 3.

COUNTY CONVICTS; HIRING AND HARD LABOR.

Feb. 18, 1895, p. 849, §91. **4520** (4585). **Laws concerning state convicts applicable to county convicts.**—All laws of the state and rules of the board of inspectors in regard to state convicts shall apply also to county convicts as far as applicable, except as otherwise provided by law.

Jefferson Co. v. Truss, 85 Ala. 486.

Ib. §92. **4521** (4586) (4465) (3764) (217). **Under control of the county commissioners.**—Hard labor for the county shall be under the superintendence and control of the court of county commissioners, or board of revenue, who shall determine in what manner and on what particular works the labor shall be performed; and all convicts sentenced to hard labor for the county shall be under the direction and control of the court of county commissioners, or board of revenue, when worked or hired in the county where convicted, but otherwise

they are to be under the superintendence and control of the board of inspectors of convicts.

Ex parte Buckalew, 84 Ala. 460; Ex parte White, 81 Ala. 80; Ex parte Small, 81 Ala. 85; State v. Metcalfe, 75 Ala. 42.

Ib. §93. **4522** (4587) (4480) (3778) (231). **When supplies, etc., furnished by county; labor on county works.**—It shall be the duty of the court of county commissioners, or board of revenue, to make provision out of the county treasury for suitable food, clothing, lodging, medicine and medical attention, for such of the convicts sentenced to hard labor for the county as are not let to hire under the provisions of this article, and from time to time give directions, general or special, for the employment of such convicts, sentenced to hard labor for the county, as are ordered to labor on the public works of the county.

Ib. §95. **4523** (4589). **Record kept of convicts sentenced to hard labor; report of judge of probate, or agent.**—A record shall also be kept in the office of the board of inspectors, similar to that provided to be kept for state convicts, of all persons who are sentenced to hard labor for the county, and who, under the provisions of this article, may be confided to their supervision; and the judge of probate, or agent of hard labor for the county, shall report to the board, at such times as the board may prescribe, the name, age, sex, and race of each person sentenced to hard labor, date of conviction, crime, term of sentence, additional term for costs, date of expiration of sentence, and amount of costs; any judge of probate failing or neglecting to make, or to have made by the agent of hard labor for his county, the reports required by law, may be impeached as in other cases; and he and the sureties on his official bond shall be liable to any person for all damages sustained by reason of such failure.

Record as evidence in suit against hirer.—Trammell v. Lee Co., 94 Ala. 194.

Ib. §96. **4524** (4590). **Record of convicts kept by judge of probate.**—The court of county commissioners, or board of revenue, shall provide a well-bound book, to be kept in the office of the judge of probate, subject, during office hours, to the inspection of the public, in which he shall enter the name of each convict sentenced to hard labor for the county, the date of hire, the name of the hirer, the place where the convict is to labor, the length of sentence, and the sum for which the convict was hired; and he shall also keep a record of the convicts sentenced to the penitentiary, showing the name, the offense of which he was convicted, and the date and termination of his sentence.

Ib. §97. **4525** (4591). **Inspection of county convicts; stipulation in contract of hire; removal of convicts.**—When convicts are sentenced to hard labor for the county, and hired out by the court of county commissioners, it shall be the duty of the inspectors of state convicts to visit such convicts whenever they shall deem it necessary; and they shall rigidly scrutinize and inquire into the treatment and management of such convicts, and shall report to the judge of probate, in writing, the condition and treatment of such convicts. No

contract shall be made by such court for hiring county convicts, without a stipulation therein that the contract shall end if the bond, in the opinion of the judge of probate, becomes insufficient, or if any convict is treated cruelly or inhumanly by the hirer or his employes. Whenever the board of inspectors shall notify the governor that convicts who have been sentenced to hard labor for the county should be removed from the place where they are at labor, or from the control of the person who has them hired, it shall be his duty to order the judge of probate of the county where said convicts were convicted, to remove them from such place, or to annul such contract, as the case may be; and any judge of probate neglecting or refusing to obey such order shall be liable to impeachment and removal from office, as provided for in other cases; and when in any case the contract is annulled, or the convicts removed under this section, they may be kept in any jail in the state until they can be hired out again or disposed of in some other legal manner.

Jefferson Co. v. Truss, 85 Ala. 486.

Ib. §99. **4526** (4592). **Official appointed to visit and report upon convicts hired within the county.**—The court of county commissioners or board of revenue of each county, the convicts of which are hired within the county and not engaged in mining, shall designate one of their number, or some other suitable person, to visit and inspect such convicts once a month. The person designated shall make monthly reports of the treatment of such convicts to the president of the board of inspectors and shall receive such compensation, to be paid out of the county treasury, as may be allowed by the court of county commissioners or board of revenue.

Ib. §100. **4527** (4593). **To whom not to be hired; when convicts not to be guarded.**—No person sentenced to hard labor shall be hired to any person related to him by consanguinity or affinity, or who is unfriendly to him, or who has not a proper prison, or immediately will prepare one for the confinement of such convict at night, or when not at work, wherein he must be kept confined at such time. But in case of a convict convicted of a misdemeanor, and hired in the county where convicted, the hirer shall not be required to keep such convict confined or attended by a guard, unless so required by an order of the court of county commissioners, incorporated in the contract of hiring.

Ib. §101. **4528. County convicts may be worked on public roads.**—Whenever the commissioners of roads and revenues of a county deem that it is to the best interest of the county to use the county convicts in building, repairing and working the public roads of the county, they may so work them under rules and regulations to be prescribed by the board of inspectors, which shall be uniform throughout the state for working county convicts on the public roads.

Ib. §102. **4529** (4595) (4466) (3765) (218). **Hard labor; what included.** Hard labor for the county includes labor on the public roads, public bridges, and other public works in the county; and authorizes the

letting of such convicts to hire to labor anywhere within the state, as may be determined by the court of county commissioners, or board of revenue.

4530 (4596) (4467). **Women not to labor on public highways.** Ib. §103. No woman convicted of a public offense shall be required to work as a laborer on any public highway in this state.

When woman with a baby discharged on habeas corpus because not put to work.—Ex parte Stewart, 98 Ala. 66.

4531 (4588) (4482) (3780) (233). **Commencement of sentences on two or more convictions.**—When a convict is sentenced to hard labor for the county, on two or more convictions, the punishment of the second or each subsequent conviction must commence on the termination of the sentence for the preceding conviction; but no person shall be sentenced to hard labor for the county so that the aggregate of the sentences on two or more convictions shall exceed two years for the crime, and the aggregate sentences for costs shall not exceed fifteen months. Ib. §94.

Fuller's case, 97 Ala. 27.

4532. Sentences for costs; not to exceed ten months; fees same as in cases of state convicts.—Whenever any convict is sentenced by the court and required to do hard labor for the county, an additional sentence not to exceed ten months in any case for the payment of costs of conviction may be imposed; and the court must determine the time required to work out such costs at the rate of thirty cents per day. The costs of conviction of county convicts shall be the same as in case of state convicts. Ib. §98.

4533. County convicts under sixteen may be sentenced to reformatory.—County convicts under sixteen years of age may be sentenced to a term in the reformatory provided for in this chapter, or to hard labor for the county, in the discretion of the presiding judge; and in such event the costs of conviction, not exceeding fifty dollars, shall be paid out of the convict fund as provided in cases of sentence to the penitentiary. Ib. §53.

4534 (4597). **Place and kind of labor expressed in contract; when changed.**—Every contract for the hire of county convicts must express the kind of labor, and the place at which it is to be performed; and such convict must be restricted to such place and labor, which must not be changed except upon the recommendation of the court of county commissioners; and county convicts can only be sublet or rehired in the same manner. Ib. §104.

What sufficient designation of place and character of labor.—Fuller's case, 97 Ala. 27.

4535 (4598) (4469) (3767) (220). **Hiring of convicts; how made.** Ib. §105. Should the court of county commissioners, or board of revenue, determine to let convicts, or any part of them, to hire, they may do so by themselves, or by some member of their body, or other person to be appointed by them.

4536 (4599) (4470, 4471) (3768, 3769) (221, 222). **Bond of hirer; how conditioned; when required clothing specified.**—The contract Ib. §106.

of hiring shall be secured by bond in writing, in a penalty of double the amount agreed on for hire, payable to the county, with two good and sufficient sureties, and conditioned to pay the amount of hire agreed on, and also to furnish the convict with a sufficiency of good and wholesome food, and with medicine and medical attention when necessary, and to treat the convict humanely; and said contract may be for one or more years; and if the hiring be for a longer term than two months, or if the condition and comfort of the convict require it, the hirer may also be required to furnish to the convict specified clothing, which shall also be expressed in the bond. The attorney-general shall prepare a form of contract and bond, which shall be furnished to the judge of probate of each county by the president of the board of inspectors, which shall be used in all cases of the hiring of county convicts.

Breach of bond.—Sloss I. & S. Co. v. Macon Co., 111 Ala. 554. Relation of master and servant does not exist between hirer and convict.—Buckalew v. Tenn. C. I. & R. Co., 112 Ala. 146.

4537 (4600) (4472) (3770) (223). **Action on hirer's bond.**—Such bond may be put in suit in any court of the county for which the convicts were sentenced to hard labor having jurisdiction of the same; and the suit shall be governed by the rules governing other suits on penal bonds; and the recovery, if any, shall be paid into the county treasury for the use of the party for whose benefit the recovery is had.

Feb. 18, 1895, p. 849, §107.

4538 (4601) (4473) (3771) (224). **If employed on public works, superintendent appointed; term of office and compensation.** Should the court of county commissioners, or board of revenue, determine to employ persons sentenced to hard labor for the county, or any part of them, in work on the public roads, public bridges, or other public works of the county, then they are authorized to appoint a superintendent of public works, whose term of office shall expire when his successor is qualified; and who shall receive for his services such compensation as shall be fixed by the court of county commissioners, or board of revenue.

Ib. §108.

4539 (4603) (4475) (3773) (226). **Form of official oath required; filed in probate office.**—The superintendent of public works, and each person employed as a guard over convicts sentenced to hard labor for the county, before he enters upon the discharge of his duties, shall take and subscribe the following oath before some officer authorized to administer the same: "I do solemnly swear that I will support the constitution of the United States, and the constitution of the State of Alabama, so long as I remain a citizen of said state, and that I will faithfully execute and discharge all duties required of me (as superintendent or guard of convicts, as the case may be), and that I will observe all rules and regulations prescribed for the government of convicts, so far as I am thereby directed, and will in no case ill-treat or abuse any convict under my charge or control, or inflict any other or greater punishment than may be prescribed by said rules and regulations"; and such oath shall be filed by the party

taking the same in the office of the judge of probate of the county in which the convict is sentenced to hard labor.

4540 (4604) (4476) (3774) (227). **Bond of superintendent.**—The superintendent of public works shall also enter into bond, payable to the county, and approved by the judge of probate, with two good and sufficient sureties, in the penalty of one thousand dollars, conditioned that he will faithfully perform the duties of his office, obey the orders of the court of county commissioners, and will not voluntarily permit the escape of any of the convicts committed to him. Ib. §109.

4541 (4605) (4477) (3775) (228). **Action on superintendent's bond.**—The bond of the superintendent may be put in suit and prosecuted in all respects as is provided in this article for suits on bonds given by hirers of convicts. Ib. §110.

4542 (4606) (4478) (3776) (229). **Duties of superintendent.**—The duties of the superintendent of public works are: Faithfully to obey and carry out the orders and directions of the court of county commissioners, or board of revenue; to see that the convicts committed to him labor faithfully; not to overwork or maltreat the convicts; to see that the food and clothing delivered to him for the convicts are given to them at the proper time; to see that they are properly housed in inclement weather; to have proper medicine and medical attention bestowed on them when necessary; and not voluntarily or negligently to permit them to escape. Ib. §111.

4543. Duty of judges to report convictions to judge of probate. All judicial officers shall, immediately upon the sentence of any person to hard labor for any county, report in writing to the judge of probate of the county for which such sentence is made, the name of such person, the length of his sentence, the date of its commencement, and the amount of costs. But any judicial officer, presiding over a court that has a clerk, may order such report to be made by such clerk. Ib. §112.

4544 (4659). **Convict must be returned to county at expiration of sentence.**—It shall be the duty of any person who has in his possession or under his control, any state or county convict, to discharge such convict at the expiration of his term of penal servitude, and to furnish him with transportation to the county-seat of the county in which such convict was sentenced to imprisonment. And he shall also furnish to such convict one good suit of clothes and fifty cents a day for each estimated day's travel from the place where he is discharged to his destination, and one hat and pair of shoes. But if such convict be charged with the commission of any other criminal offense he must be delivered to the proper sheriff or officer, to answer such charge, under such rules and regulations as may be prescribed by the board of inspectors. Ib. §75.

4545. Law relating to convicts and prisoners to be given in special charge to grand jury.—The judges of the circuit and city courts shall give in special charge to the grand jury, the provisions of this Code relating to convicts and prisoners. Ib. §114.

CHAPTER 140.

CONVICTS AND PRISONERS, OFFENSES CONCERNING. 4546–4557.

4546 (3753) (4319) (3686) (143). **Maltreatment of convicts by officer.**—Any superintendent, guard, or other officer having charge of convicts, who overworks or maltreats any convict, or inflicts upon him any other or greater punishment than he is authorized by law to inflict, must, on conviction, be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

4547 (3754) (4320) (3687) (144). **Maltreatment of convicts by hirer.**—Any hirer of a convict, who overworks or maltreats such convict, or fails to supply him with a sufficiency of good and wholesome food, or with necessary medicines and medical attention, or with warm and comfortable clothing, or with comfortable shelter in inclement weather, must, on conviction, be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

Sufficiency of indictment.—Sanders's case, 55 Ala. 184. For hirer to chastise convict, may be assault and battery.—Prewitt's case, 51 Ala. 33.

4548 (3981). **Detaining convict after expiration of his sentence.** Any person, who willfully detains, imprisons, or works any convict, state or county, after the termination of the sentence of such convict, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars, and shall also be sentenced to hard labor for the county for not more than twelve months; and one-half of the fine, when paid, or when the fine is not paid, one-half of the amount received from such hard labor, shall go to the convict so illegally detained or imprisoned.

4549 (3982). **Witness refusing to appear or testify concerning treatment of convicts.**—Any person, who fails to obey the summons of any inspector of convicts to appear and testify as a witness, or who appears as a witness and refuses to testify as to any matter concerning the management and treatment of convicts, must, on conviction, be fined not more than one hundred dollars.

4550 (3984). **Failure of duty, or violation of law regulating convicts by guard, etc.**—Any inspector, guard, or hirer of convicts, state or county, or any other person having the charge, management, or control of any such convict, who fails to discharge any of the duties imposed upon him by law, or in any other way violates any of the provisions of law regulating or governing the hiring, inspection, treatment, confinement, working or guarding, or the charge, management, or control of convicts, state or county, when no other punishment is provided for such failure in duty, or violation of law,

must, on conviction, be fined not more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

4551 (3986). **Convict discharged when term expires; furnished with clothes, etc.**—Any person, having in his possession or under his control any state convict, who refuses or fails to discharge such convict at the expiration of his term of penal servitude, or who, upon so discharging such convict, fails to furnish him with transportation to the county-seat where such convict was sentenced, or its equivalent in money, or to furnish such convict with one good suit of clothes, must, on conviction, be fined not more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

4552 (3989) (4606) (3908) (360). **Violation of duty concerning convict in solitary confinement, or allowing conversation with him.** Any officer or person employed in the penitentiary, who suffers any convict under sentence of solitary confinement to be at large, out of the cell assigned him, unless directed by the physician to remove him to the hospital on account of sickness, or allows any convict to be conversed with contrary to the regulations of the penitentiary, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars.

4553 (3987) (4583) (3885) (337). **Permitting convicts to be furnished with intoxicating liquors.**—Any officer or other person, having the management or control of convicts, who permits any intoxicating liquors to be furnished to any convict, except on the written prescription of a physician, forfeits all wages due him, and must, on conviction, be fined not less than one hundred dollars.

4554. Furnishing intoxicating drink to convict.—Any person who sells, gives, or furnishes to a convict any intoxicating beverage or drink, is guilty of a misdemeanor, and, on conviction, must be fined not less than fifty dollars and sentenced to the county jail or to hard labor for the county for not less than three nor more than six months. Feb. 18, 1895, p. 849, §89.

4555. Trespassing about prisons.—Any person who goes about any prison against the will or order of the officer in charge shall be guilty of a misdemeanor, and, on conviction, must be fined not less than twenty dollars and sentenced to hard labor for the county for not more than six months. Ib. §89.

4556 (3988) (4494). **Permitting prisoner to receive spirituous or vinous liquors.**—Any jailer, who gives, or knowingly suffers any prisoner to receive any spirituous or vinous liquors on any pretext whatever, except on the written order of a physician, stating that such liquor is necessary for his health, must, on conviction, be fined not less than one hundred dollars.

4557 (3755) (4321). **Imprisoning together white and colored prisoners before conviction.**—Any jailer or sheriff, having the charge of white and colored prisoners before conviction, who imprisons them permanently together in the same apartment of any

jail, or other place of safe-keeping, if there is a sufficient number of apartments to keep them separate, must, on conviction, be fined not less than fifty, nor more than one hundred dollars.

CHAPTER 141.

COSTS AND FEES.

ARTICLE 1.—GENERAL PROVISIONS CONCERNING COSTS AND FEES. 4558, 4559.
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ARTICLE 1.

GENERAL PROVISIONS CONCERNING COSTS AND FEES.

4558 (4892) (5017) (3534) (3063). **No fee charged unless expressly authorized.**—The law of costs must be deemed and held a penal law, and no fee must be taken but in cases expressly provided by law.

Statutes on subjects of fees and costs are penal, and must be strictly construed.—Dent's case, 42 Ala. 514; Lee v. Smyley, 16 Ala. 773. See Caldwell's case, 55 Ala. 133. Motion to retax costs; appeal will lie from.—Dent's case, supra. Neither state nor county liable for costs incurred in prosecutions, except to extent and in manner provided by statute.—Greene County v. Hale County, 61 Ala. 72. State never taxed with costs.—Eslava v. Ames Plow Co., 47 Ala. 384; Pollard v. Brewer, 59 Ala. 130. County liable for costs on failure in action against bail.—Dover's case, 45 Ala. 244. Pay of defendant's witnesses not part of costs.—Hill's case, 78 Ala. 1. Assessed value of property not part of costs, where sentence is to penitentiary.—Skinner v. Dawson, 87 Ala. 348. Costs incurred under an indictment which is quashed is no part of costs in subsequent trial for same offense.—Bazell's case, 89 Ala. 14. "Costs" which a defendant may be sentenced to hard labor to pay includes officers' fees incurred in behalf of state, but not for the defense.—Bowen's case, 98 Ala. 83. "Costs and fees" defined.—Bradley's case, 69 Ala. 318.

4559 (4893). **When prisoner deemed insolvent; return of execution.**—No prisoner shall be regarded as insolvent without the return of "no property" upon execution issued against him, in the particular case; and no execution shall be so returned within less than thirty days from the time it goes into the hands of the sheriff.

ARTICLE 2.

FEES OF ATTORNEY-GENERAL.

4560 (4867) (5048) (4344) (793). **Attorney-general's fees.**—In all criminal cases taken to the supreme court, if judgment is there rendered in favor of the state, the attorney-general is entitled to a fee of fifteen dollars, to be taxed and collected as costs.

ARTICLE 3.

FEES AND COMMISSIONS OF SOLICITORS.

4561 (4868) (5047) (4343) (792). **Solicitors' fees.**—Solicitors are entitled to the following fees, to be taxed against the defendant, on conviction, and if he is insolvent, to be paid out of the fines and forfeitures in the county treasury—that is to say:

For each conviction under section 4795 (4055), or 4808 (4068)	$150 00
For each conviction under section 5128 (3942), 5117 (3932), 5327 (4075), or 4770 (3847)	100 00
For each conviction under section 4799 (4059), 4801 (4061), 4804 (4064), 5546 (4143), 4854 (3725), 4858 (3729), 4860 (3731), 4855 (3726), 4856 (3727), 4863 (3734), 4861 (3732), 4862 (3733), 5444 (3736), 5446 (3738), 5447 (3739), 5449 (3740), 5479 (3742), or 4336 (3780)	75 00
For each conviction under section 4797 (4057), or 4798 (4058)	60 00
For each conviction under section 4310 (4012), 4406 (4016), 4654 (4033), 5078 (4038), 5079 (4039), 4771 (3848), or 4772 (3849)	37 50
For each conviction under section 4792 (4052), except when the defendant pleads guilty; and for each conviction under sections 4420 (3775), 4421 (3776), 4422 (3777), 4653 (4032), 5082 (4041), 5083 (4042); and for each conviction of felony not otherwise provided for	30 00
For each conviction under section 4803 (4063), 5151 (3901), or 4551 (3986)	25 00
For each conviction of a violation of the revenue law, not otherwise provided for	30 00
In proceedings to vacate charter, or for usurpation, or forfeiture of office, if judgment is rendered for the plaintiff	100 00
For each conviction under section 4792 (4052), when the defendant pleads guilty; and for each conviction under section 5065 (3773), and for each conviction of an assault, assault and battery, or affray, where a stick or other weapon is used	15 00
On conviction in cases of bastardy	50 00
For each conviction of a misdemeanor, not otherwise provided for	7 50

Feb. 28, 1887, p. 116, §3. For securing the conviction of any corporation for violating any law of the state . . . . . $ 50 00

Feb. 10, 1887, p. 125, §2. For securing the conviction of any person for obtaining registration of any animal by false representations as to breeding 50 00

For each conviction of a violation of sections 5076 (4036), 5081 (4040), 5082 (4041), 5083 (4042), or any law prohibiting the sale of spirituous, vinous or malt liquors, not herein otherwise provided for 30 00

For each conviction in a case removed from the county court, or from a justice's court, the same fee as if the case had originated in the circuit or city court; and for convictions in the county court, the same fees and emoluments that they are allowed by law for similar convictions in the circuit or city court; but they shall only receive one fee in cases that are convicted in the county court, and the defendant appeals to the circuit or city court, and is again convicted on the same charge, such fee to be equally divided between the solicitors for the county court and the circuit or city court.

Only one fee in such case.—Banks's case, 96 Ala. 41.

For prosecuting a defendant charged with a criminal offense, whose case has been removed from any court of such solicitor's circuit into the United States court, to conviction in the latter court, or for making and successfully prosecuting motion in such court to remand the cause to the state court, the same fee as is allowed to him upon conviction in the state court for same offense; to be taxed and collected as such fee would be taxed and collected on conviction in state court. And any attorney appointed by him to appear for, and represent the state in such cases, in his stead, shall be entitled to same fees for like services, to be taxed and collected in same manner; but in no case less than 25 00

On all forfeitures collected by the clerk or sheriff, five per centum thereof.

Entitled to only one fee when two or more indicted and convicted jointly. Dent's case, 42 Ala. 514; Brown's case, 46 Ala. 148. Under indictment for assault to murder with weapon, plea of guilty of simple assault denies the intent only, and solicitor's fee is fifteen dollars.—Adams's case, 48 Ala. 421. Where two counts joined, and one nol. prossed, and conviction had under the other, solicitor's fee taxed under latter.—Ex parte Tompkins, 58 Ala. 71. Effect of repeal and re-enactment of statute on provision fixing fees.—Caldwell's case, 55 Ala. 133. Solicitors' fees same in county court as in circuit court.—Murphy's case, 71 Ala. 15. Solicitors' fees as to lotteries.—Hawkins's case, 89 Ala. 103.

ARTICLE 4.

FEES OF CLERKS OF CIRCUIT AND CITY COURTS.

4562 (4869) (5041) (4337) (786). **Fees of circuit and city court**

clerks.—Clerks of the circuit and city courts are entitled to the following fees in criminal cases—that is to say:

For docketing each cause, to be charged but once . . .	$ 10
For issue of any writ, scire facias or notice	50
Each subpœna issued	25
Each continuance by defendant	25
Entering recognizance	50
For each trial	50
Entering judgment against each defendant	25
Entering sentence against each defendant	25
Issue of each execution	50
Each entry of the discharge of bail on surrender of the principal, to be paid by the bail	50
Entering order of removal of trial, and the incidents of such removal	1 00
Making transcript and certificate, for each hundred words .	15
Entry of forfeiture against defendant	50
Final judgment of forfeiture against defendant	50
Entry of forfeiture against witness or juror, each	25
Issuing execution	50
Final record, for each hundred words	15
Record for supreme court, for each hundred words . . .	15
Certifying same	25
For recording indictments and making certified copies thereof, under sections 4916 (4388) and 4920 (4392), to be taxed as a part of the costs in the case	25

4563 (4870) (5042) (4338) (787). **Costs, how taxed and collected.** Of the fees specified in the preceding section, such as accrue on a forfeiture against a defaulting juror, witness, or bail, must be taxed as costs, and collected under execution against such witness, juror, or bail, unless excused therefrom by the court; and all other specified fees for such services as are rendered in the case must be taxed as costs against the defendant, on conviction, or against the prosecutor, or the foreman of the grand jury, as provided by section 5041 (4355), and collected by execution; and in all trials in the circuit or city courts, or county courts, where the state fails to convict, or the indictment abates, or is nol. prossed, or withdrawn, the fees of the sheriffs and clerks of said courts shall be paid out of the fine and forfeiture fund; but said sheriffs and clerks must make affidavit before the circuit, city, or probate judge of the amount due them; and the right of said sheriffs and clerks to such payment of their said fees shall be postponed to the rights of state witnesses, as they now exist.

Bradley's case, 69 Ala. 318; Hill's case, 78 Ala. 1; Skinner's case, 87 Ala. 348.

4564 (4871) (5024). **Clerks of city and criminal courts; how paid.**—The legal fees of the clerks of the city and other criminal courts, in criminal causes, shall, at the termination of such causes, be paid to the clerks in the same manner, and to the same extent that clerks of the circuit courts are paid; and all laws now in force,

or which may be hereafter enacted, providing for the payment of fees in state cases to clerks of the circuit courts are made applicable to clerks of city and other inferior courts.

ARTICLE 5.

FEES OF SHERIFFS.

4565 (4872) (5043) (4339) (788). **Sheriffs' fees and allowances; sheriffs to file application for fees, when.**—Sheriffs are entitled to the following fees and allowances in criminal cases—that is to say:

For executing search-warrant by day	$ 1 00
For executing search-warrant by night	2 00
For executing warrant or writ of arrest	2 00
For each bond or undertaking returned to court	1 00
For serving each subpœna or notice	50
For committing prisoner to jail	1 00
For releasing prisoner from jail	1 00
For summoning jury in capital case, or at any special court for trial of criminal	3 00
Feb. 27, 1889, p. 120. For attendance each day on such court, to be paid by the county	2 00
For execution of criminal, and all incidents, to be paid by the county	50 00
For levying and making money on execution for costs	1 00
For feeding each prisoner in jail under charge or conviction for any indictable offense, to be paid by the state, for each day	30

But upon conviction, the fees for feeding such prisoner, though to be paid by the state, must be taxed against him as part of the costs to be collected by execution; and such fees, when collected, shall be paid to the clerk of the court from which the execution was issued, who shall give to the officer from whom he receives the same, receipts in duplicate, showing the amount, from whom, and the case in which the money was collected, one of which shall, within ten days, be forwarded to the auditor; and the clerk shall forthwith pay over the money so received by him to the state treasurer for the use of the state. In no case shall any defendant, on conviction, be sentenced to hard labor for the payment of the sheriff's fees for feeding him while in jail. And when any person or contractor has entered into contract to work at hard labor any prisoner confined in jail under conviction and sentence, outside the walls of the penitentiary, the compensation of the sheriff for finding such prisoner after the taking effect of the sentence against him, must be paid by such person or contractor before the prisoner is removed from the jail.

Feb. 28, 1887, p. 96.

For feeding each prisoner confined in jail for contempt of court, or under attachment, or as a witness, or by virtue of any warrant or other process to keep the peace, or on account of insanity, to be paid by the prisoner, or by the state, if he is insolvent, for each day . . . . . .$ 30

For feeding prisoner under bastardy proceedings, to be paid by complainant, or the defendant, according to the judgment of the court; or if the party adjudged to pay such costs is insolvent, then to be paid by the state, for each day . 30

For serving warrant on person charged with knowingly concealing or harboring person belonging to ship or vessel . . 3 00

For levying execution, and making money on judgments against defaulting jurors, witnesses, bail and defendants, and on judgments confessed under section 5423 (4502), the same fees as in civil cases.

For removing any prisoner in cases where there is no jail in the county in which the offense is committed, or the jail therein is insecure, to the jail of another county, and for returning him to the jail of the county from which he was removed, or to court for trial, three dollars for himself or his deputy acting in his stead, and two dollars for each guard for each day they are respectively engaged in such removal, together with the actual necessary traveling expenses of himself or deputy, and guard or guards, and prisoner or prisoners while on the trip, by the nearest route usually traveled between the points from and to which such removal is made, to be taxed against, and paid by such prisoner, on conviction, or, if he is insolvent, or is acquitted, by the county in which the offense was committed; but in no case shall the county to which such prisoner was removed be liable for such costs or fees. Dec. 12, 1892, p. 101, §1.

For removing any prisoner upon a change of venue granted in his case, or who is arrested and confined in jail in a county other than that in which he is triable, or arrested for contempt, three dollars for himself or his deputy acting in his stead, and two dollars for each guard for each day they are respectively engaged in such removal, together with the actual necessary traveling expenses of himself or deputy, and guard or guards, and prisoner or prisoners while on the trip, by the nearest route usually traveled between the points from and to which such removal is made, to be paid by the state upon his sworn account therefor, accompanied by a certificate of the clerk of the court in which such prisoner is triable, that such fees have been reported to, and docketed by him. If such prisoner is convicted, the clerk of the court in which the conviction is had shall tax the costs of such removal against him, and shall immediately, upon the adjournment of the court, issue execution therefor, and for the other costs, and deliver the Ib.

same to the sheriff of his county; and such sheriff, upon the collection of the costs of such removal, shall pay the same to the state treasurer.

Ib. §§2, 3. **4566. Guards; application therefor to be in writing under oath; when allowed.**—Whenever the sheriff makes application for the employment of a guard in the removal of a prisoner, such application must be in writing and briefly set forth the facts necessitating the employment of a guard, which shall be verified by oath and filed in the office of the judge of probate of the county to which such removal is made, and the judge making the order of removal, if he grants the application for a guard, shall indorse thereon that he has investigated the facts and believes a guard to be necessary. But no guard shall be obtained for the removal of a prisoner charged with a misdemeanor, except upon the order of the governor, or a circuit judge, in cases when it is necessary to protect the prisoner from violence.

Ib. §4. **4567. Auditor may prescribe route to be traveled in removing prisoners.**—The auditor, with the approval of the governor, may, from time to time as he deems necessary, prescribe the routes which shall be taken in the removal of prisoners; and after the sheriff has been notified of the route so prescribed, no compensation shall be paid him for the removal of a prisoner carried by any other route.

Ib. §5. **4568. Two preceding sections apply to county as well as to state removals.**—The provisions of the two preceding sections apply alike to cases in which removal fees are payable by the county, and by the state.

Feb. 10, 1891, p. 546. **4569. Expense of bringing back absconding felon on requisition; how paid.**—Any sheriff or other person commissioned as agent of this state to receive from another state any prisoner for removal to this state to answer a charge of felony, is entitled to receive actual expenses and two dollars per day while going to and returning from the place where the prisoner is arrested or confined, to be paid, on the approval of the governor and auditor, as in other cases of removal of prisoners by sheriffs.

4570 (4873) (5044) (4340) (789). **Same; how taxed and paid.** The fees specified in this article, except where some other provision is made by law, are to be collected and paid in the following manner:

The fees which accrue against defaulting jurors, witnesses, and bail are to be paid by them respectively, unless excused by the court.

The fees for services rendered in each criminal case must be taxed against the defendant on conviction, or may be taxed against the prosecutor, or the foreman of the grand jury, under the provisions of section 5041 (4355); and if an execution against either of them is returned "no property found," or if the costs are not taxed against either of them, such costs must be paid by the state, except when they are payable by the county.

Unless otherwise provided, accounts due to sheriffs, which are payable by the state, must be proved in open court before the presid-

ing judge of the circuit or city court, and certified by him to be correct, or be certified by the clerk of the circuit or city court, and sworn to before the judge of probate; and, being so certified and proved, must be presented to the auditor, accompanied by the affidavit of the sheriff, to the effect that the same is correct, and that no part thereof has been paid; and, if found correct, the auditor must draw his warrant on the state treasurer for the amount thereof, which must be paid out of any money in the treasury not specially appropriated Feb. 18, 1891, p. 1397.

No sheriff must be paid out of the state treasury any fee or allowance whatever, on account of any prisoner who has escaped from his custody; but the commissioners' court may, in their discretion, pay such fees and allowances as are payable by the county, notwithstanding the escape of the prisoner, if satisfied that such escape was not caused by the connivance or negligence of the officer having charge of him.

4571 (4874) (5063). **Fees of bailiffs.**—Bailiffs shall receive one dollar and fifty cents per day while in attendance on the circuit, city, criminal, or probate court, to be paid in the same way that regular jurors are paid.

ARTICLE 6.

FEES OF CORONERS.

4572 (4875) (5045) (4341) (790). **Coroners' fees.**—The coroner is entitled to the following fees:

For going to and returning from the place where he holds an inquest, five cents for each mile traveled.	
For holding an inquest	$ 2 50
For summoning jury on inquest	1 00
For each subpœna	25
For each warrant of arrest	50
For each bond or undertaking returned to court	50
For attending post-mortem examination, where no jury is summoned, and returning opinion of surgeon or physician, five cents for each mile traveled in going and returning, and one dollar; to be paid, to be returned to court, and to be taxed as costs in same manner as fees for holding inquest.	
For money paid into the county treasury, when found on the body of a deceased person, five per cent., but in no case more than	5 00
For all other services performed by him, in cases authorized by law, the same fees that are allowed to sheriffs for similar services.	

4573 (4876) (5046) (4342) (791). **Fees for inquest, how taxed and paid; post-mortem examinations and fees therefor; other fees.** Fees for holding inquest shall be paid out of the county treasury,

when, in the opinion of the court of county commissioners or board of revenue, the inquest should have been held; and such fees must be also certified by the coroner, to the clerks of the circuit and city courts of the county, and must be taxed as costs against any person who is convicted of murder or manslaughter by killing the person on whose body the inquest was held, and be collected like other costs in criminal cases; and, when collected in cases in which the county has paid the same, shall be paid to the county treasurer for the use of the county; and in other cases to the coroner. But no fees shall be paid for an inquest when it is publicly known before the jury is summoned, who caused the death of the deceased, or when the slayer has been arrested for the homicide; but in such case, if the immediate cause of the death is uncertain, a physician or surgeon may be summoned to make a post-mortem examination, who shall give his opinion in writing as to the cause of the death, which must be returned by the coroner as inquests are returned by him, and such coroner, physician, or surgeon, shall be entitled to the same fee and mileage, to be paid in the same manner, as for attending an inquest; such fees as accrue to coroners for services rendered by him in discharging duties of sheriff, must be taxed, collected and paid in the same manner that sheriff's fees for like services are taxed, collected and paid.

Claim must be audited and allowed by commissioner.—Hawkins's case, 103 Ala. 398.

ARTICLE 7.

FEES OF JUSTICES OF THE PEACE.

4574 (4877) (5037) (4333) (782). **Justices' fees.**—Justices of the peace are entitled to the following fees in criminal cases—that is to say:

For complaint made before him	$ 25
For issuing warrant of arrest	50
For issuing search-warrant	75
For issuing a warrant in bastardy proceedings	1 00
For taking examination in bastardy proceedings	50
For each bond or undertaking of the accused	50
For each bond or undertaking of witness	25
For issuing each subpœna or notice	25
For order of commitment to jail	25
For each trial of misdemeanor	1 00
For each order of continuance	25
For each judgment on forfeited bond or undertaking	50
For taking bond and certifying proceedings on appeal	1 00
For each execution for costs	25
For issuing warrant for person knowingly concealing or harboring any person belonging to any ship or vessel, to be paid by the master	50

And for hearing the testimony and making necessary orders in such case, to be paid by the master . . . . . .$ 1 00

4575 (4878) (5038) (4334) (783). **Same; how taxed and collected.**—In prosecutions before a justice of the peace, where the case is not taken to the circuit or city court by appeal, or otherwise, the fees above specified, for such services as may be rendered in the case, must, unless otherwise provided, be taxed by him as costs, and collected by execution, as in cases tried in the county court; and, in all other cases, must be certified by him to the court to which the proceedings are removed, or to which the process is returnable, and there taxed and collected like other costs.

McPherson v. Boykin, 76 Ala. 602.

ARTICLE 8.

FEES OF CONSTABLES.

4576 (4879) (5039) (4335) (784). **Constables' fees.**—Constables are entitled to the following fees in criminal cases—that is to say:

For executing a search-warrant by day . . . . . .$ 1 00
For executing a search-warrant by night 2 00
For executing any other warrant 50
For serving each subpœna or notice issued by a justice of the peace 25
For serving each subpœna or notice issued by the county court 50
For carrying a person before a magistrate under a warrant of arrest, or to jail when committed thereto, for himself and each necessary guard, to be proved by his own oath, for each mile 10
For performing any other service under process from the county court, the fees taxed for those services under section 4578 (4881).
For carrying a prisoner to the jail of another county, when there is no sufficient jail in the proper county, the same fees that are allowed to the sheriff for similar services, to be paid in the same manner.
For serving warrant against person charged with knowingly concealing or harboring person belonging to any ship or vessel, to be paid by the master 3 00
For taking and approving each bond or undertaking . . . 50

4577 (4880) (5040) (4336) (785). **Same; how taxed and collected.**—In all criminal prosecutions, the fees specified in the preceding section, for the services rendered in the case, must be taxed as costs by the court or justice, and collected like other costs.

ARTICLE 9.

FEES IN COUNTY COURT.

4578 (4881) (5035) (4328) (777). **Fees in county court.**—In prosecutions before the county court, the following fees shall be allowed for the services specified, and none other—that is to say:

For taking affidavit of complainant and issuing warrant of arrest	$ 1 00
For taking and approving bail-bond	50
For issuing each subpœna or notice	25
For each order of continuance	50
For trial, entering judgment, and, when an appeal is taken, approving bond and certifying proceedings	5 00
For judgment on forfeited undertaking of bail	3 00
For judgment against defaulting witness	2 00
For serving warrant of arrest when bail is given	1 00
For serving warrant of arrest when bail is not given, and carrying defendant to court or to jail	2 00
For serving each subpœna or notice	50

The fees above specified shall be taxed against the defendant on conviction, or against the prosecutor under the provisions of section 4619 (4223), and, if not paid presently, may be collected by execution; but no fee shall be taxed for services not rendered.

The fees taxed for services performed by the county court, or by the judge of said court, belong to the county, and, when collected, shall be paid into the county treasury; and the fees taxed for all other services shall be paid to the officers by whom the services are performed.

4579 (4882) (5035) (4328) (777). **Same; fees of judges to be paid out of county treasury.**—The judge of the county court shall receive no other compensation than the following fees, which shall be paid out of the county treasury—that is to say:

If the warrant of arrest is issued by him, then for all the proceedings had before him in each case, including bond and certified copy of proceedings on appeal	$ 4 00
If the warrant of arrest is not issued by him, then for all services in each case	3 00
For each judgment against a defaulting witness, or on forfeited undertaking of bail	2 00

ARTICLE 10.

FEES OF JURORS.

4580 (4883) (5049) (4345) (794). **Regular jurors' fees; proved by oath of juror; certificate of clerk.**—Regular jurors, grand and petit, are entitled to two dollars for each day's service, five cents for each mile traveled in going to and returning from court, and ferriage and toll, to be proved by the oath of the juror before the

clerk of the court, whose duty it is to give each juror a certificate, stating therein the number of days he has served, the number of miles he has traveled, the amount of ferriage and toll he has paid, and the amount of compensation to which he is entitled; which certificate shall be receivable in payment of county taxes, and any other county dues, and payable out of the county treasury.

Jackson v. Dinkins, 46 Ala. 69.

4581 (4884) (5051) (4346) (795). **Tales jurors' fees.**—Tales jurors summoned for the trial of a capital case, under the provisions of section 5004, and attending in obedience to the summons, are entitled to the same compensation for their attendance as regular jurors, and to be paid in the same manner; other tales jurors are entitled to the same compensation for each day's attendance as regular jurors receive, to be paid in the same manner.

4582 (4885) (5050). **Fees of coroner's jury.**—Jurors summoned by a coroner to hold an inquest are entitled to the same compensation allowed grand and petit jurors, to be paid in the same manner; the mileage to be estimated by the nearest route usually traveled from each juror's place of residence to the place where the inquest is held.

Claim of coroner's juror must be audited and allowed by commissioners' court.—Hawkins v. Duncan, 103 Ala. 398.

ARTICLE 11.

FEES OF WITNESSES.

4583 (4886) (5059) (4347) (796). **Fees and compensation of witnesses.**—Witnesses in criminal cases are entitled to fifty cents per day and three cents for each mile to and from their residence by the usual traveled route and all necessary ferriages and tolls.

4584 (4887) (4927, 4459) (4220, 4221) (668, 669). **How taxed and paid.**—The fees of witnesses, subpœnaed on the part of the state to appear before the grand jury, or before any court in which a criminal prosecution is pending, must be taxed against the defendant, if he is convicted, or against the prosecutor when the costs are imposed on him; but if the defendant is not convicted, and the costs are not imposed on the prosecutor, or if the indictment is withdrawn and filed, or the prosecution abated by the death of the defendant, or if the costs are imposed on either the defendant or the prosecutor, and an execution against him for the same is returned "no property found," or if no indictment is found by the grand jury before whom the witnesses appear, or if a nolle prosequi is entered in the case, such fees must be paid by the county in the manner specified in section 4586 (4889). *

*An act approved November 27, 1896 (Pamph. Acts, p. 16), entitled "An act to provide for the registration and payment of fees of the state's witnesses before the grand juries, in cases where the defendant is not arrested within three years from the date of the indictment, and for the payment into the fine and forfeiture fund of said fees, if subsequently collected," is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That in all cases

Certificate issued by clerk of court (and not that by foreman of grand jury) is the only authentication of claim.—Alston v. Yerby, 108 Ala. 480. Grand-jury ticket as a claim.—Scruggs's case, 111 Ala. 60.

4585 (4888) (4928) (4223) (671). **Only two witnesses allowed to same fact; exceptions.**—In taxing the cost, against either the defendant or prosecutor, under the preceding section, not more than two witnesses, who were summoned or examined to prove the same fact, shall be allowed; unless such witnesses were summoned or examined to assail or defend the reputation of a witness for veracity, or the character of the defendant, when put in issue; or unless the court, on a motion to retax as in civil cases, should determine that the facts of the case justified the summoning or examining of a greater number of witnesses.

4586 (4889) (4460) (4222) (670). **Witness's certificate; how payable; clerk not entitled to fee for issuing.**—It is the duty of the clerk of the court to issue a certificate to each witness appearing on the part of the state, stating therein the amount of compensation to which he is entitled, and the facts which, under the provisions of section 4584 (4887), make it a good claim against the county, which certificate is receivable in payment of any debt due to the county for fines and forfeitures, and payable by the treasurer out of any fines and forfeitures in the county treasury; the clerk who issues the certificate hereinabove mentioned shall not be entitled to demand or charge any fee for performing said duty.

Certificate is primary charge on fine and forfeiture fund; need not be presented to commissioners' court for allowance.—Briggs v. Coleman, 51 Ala. 561. Failure of county treasurer to pay is breach of his bond for which action lies. Ib. Clerk must authenticate by his certificate claims of witnesses before grand jury, although foreman is required also to give certificate of attendance. Herr v. Seymour, 76 Ala. 270. Sufficiency of certificate.—Ib. Statute construed.—Ib. Witness's certificates held to be transferable by delivery, etc. Findley v. Wyser, 1 Stew. 23. Clerk's certificate to witness only authentication against fine and forfeiture fund.—Alston v. Yerby, 108 Ala. 480. "Grand-jury tickets" discussed and defined.—Ib.; Scruggs's case, 111 Ala. 60. Sheriff's fees for serving witness for defendant not claim against fine and forfeiture fund.—Cohen v. Coleman. 71 Ala. 496.

4587 (4890). **Fees of state witnesses when subpœnaed in more cases than one.**—A witness for the state, attending in more criminal cases than one at the same time, shall only be entitled to fees in one case, to be selected by him while so attending; but if after the case in which he elects to claim his fees is disposed of, his attendance is required in the other case or cases, he shall, for such attendance, be

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where there have been indictments found by the grand juries, and the defendant against whom said indictment has been returned is not arrested within three years from the date of said indictment, the fees due state's witnesses for their attendance and mileage before said grand juries shall become charges against the fine and forfeiture fund of the county in which said indictment was found; *Provided*, that the provisions of this act shall apply only to claims hereafter accruing.

"SEC. 2. *Be it further enacted*, That it shall be the duty of the clerk of the court, when he certifies fees as claims as charges against the fine and forfeiture fund to note said fact on the grand-jury docket, and said fees, should they subsequently be collected, shall be paid into the fine and forfeiture fund.

"SEC. 3. *Be it further enacted*, That it shall be the duty of the clerk of the court to certify the facts necessary to make said claims charges against the fine and forfeiture fund under the provisions of this act, on the original certificates issued by the foreman of the grand jury, and said certificates so certified shall be registered by the treasurer as a claim against said fund."

entitled to claim his per diem in such other case, or if more than one, in the one in which he may then elect to claim his fees; and so on until all the cases in which he is required to attend are disposed of by trial, continuance, or otherwise.

4588 (4891) (5062) (3217) (2778). **Witnesses' fees before justices of the peace.**—In all criminal cases before justices of the peace, unless otherwise provided, witnesses are entitled to fifty cents per day, while in attendance on the trial, to be taxed in the bill of costs.

CHAPTER 142.

COURTS.

ARTICLE 1.—CRIMINAL COURTS IN GENERAL. 4589, 4590.
2.—CIRCUIT AND CITY COURTS. 4591, 4592.
3.—COUNTY COURTS, AND PROCEEDINGS THEREIN. 4593–4629.
4.—JUSTICES OF THE PEACE, AND PROCEEDINGS BEFORE THEM. 4630–4641.

ARTICLE 1.

CRIMINAL COURTS IN GENERAL.

4589 (4193) 4626) (3928) (380). **Criminal jurisdiction vested in what courts and officers.**—The criminal jurisdiction of this state is vested in the circuit courts, city courts, county courts, justices of the peace, and such other courts and officers as are by law clothed with criminal jurisdiction.

Inherent power of courts to adjourn after opening of term.—Williams's case, 67 Ala. 186.

4590 (4194) (571, 618, 657, 694, 746, 758) (660, 700, 746, 791, 832, 842) (568, 604, 628, 671, 704, 712). **Punishments by the respective courts for contempt.**—The courts of this state may punish for contempts by fine and imprisonment, one or both, as follows: The supreme court, by fine not exceeding one hundred dollars, and imprisonment not exceeding ten days; the chancery, circuit and city courts, by fine not exceeding fifty dollars, and imprisonment not exceeding five days; the courts of probate and county courts and registers in chancery, by fine of not exceeding twenty dollars, and imprisonment not exceeding twenty-four hours; the courts of county commissioners, by fine not exceeding ten dollars, and imprisonment not exceeding six hours; and justices of the peace, by fine not exceeding six dollars, and imprisonment not exceeding six hours.

Courts of justice have inherent power to punish all persons for contempt of their rules and orders, for disobedience of their process, and for disturbing them in their proceedings.—Ex parte Hardy, 68 Ala. 303; Withers's case, 36 Ala. 252. Cannot be revised by appellate court, or by habeas corpus.—Ex parte Hardy, supra. When attachment for contempt a civil remedy.—Ib. Contempt by an attorney, and power of court to remove or suspend.—Withers's

case, supra. Refusal to pay over money under a chancery decree; jurisdiction, discretion, etc.—Ex parte Walker, 25 Ala. 81. Power to punish for contempt is incident to all courts.—Coleman v. Roberts, 113 Ala. 323; Easton's case, 39 Ala. 551. A bystander in court remarking, "I know of two witnesses at my house who saw the affair," and refusing to give their names on demand by the court, is properly imprisoned for contempt.—Coleman v. Roberts, 113 Ala. 323.

ARTICLE 2.

CIRCUIT AND CITY COURTS.

4591 (4196) (4627) (3929) (381). **Jurisdiction of circuit courts.** The circuit courts have original jurisdiction of all felonies and misdemeanors, committed in the several counties in which they may be held, under the regulations prescribed by law; and they have appellate jurisdiction of all criminal cases tried before the county courts, or before justices of the peace, under the rules hereinafter prescribed.

Incompetency of judge: Nemo judex in causa propria.—Castleberry's case, 23 Ala. 88. No objection that the presiding judge is connected by marriage with the owner of the building as to which the burglary was alleged to have been committed.—Newman's case, 49 Ala. 9. Objection to competency of presiding judge of county court no ground for reversal of judgment.—Sale's case, 68 Ala. 530. Relation of judge to person slain, though not within the letter of the statute, renders judge incompetent to preside at trial of slayer for murder. Gill's case, 61 Ala. 169. Incompetency no ground for reversing the judgment. Sale's case, 68 Ala. 530. See also citations to section 2637.

4592 (4195). **Jurisdiction of city courts.**—The city courts have, in the counties in which they are respectively established, unless otherwise provided, the same criminal jurisdiction, both original and appellate, that the circuit courts have in other counties.

ARTICLE 3.

COUNTY COURTS, AND PROCEEDINGS THEREIN.

4593 (4197) (719) (3935) (387). **Probate judge ex officio judge of county court; official oath.**—The judges of probate shall be, ex officio, the judges of the county courts of their respective counties; and each of the said judges shall, before he enters on the discharge of the duties of his office, take and subscribe the oaths prescribed by law for other judicial officers, and further swear that he will faithfully report to the court of county commissioners a just and true statement of the services performed by him for which he is entitled to fees; which oaths must be filed in the office of the clerk of the circuit court.

4594 (4198) (720) (3936) (388). **Official bond of county court judge.**—The judges of the several county courts shall each enter into bond, payable to the State of Alabama, with two or more good and sufficient sureties, to be approved by the judge of the circuit court, in the penalty of five thousand dollars, conditioned that he will faithfully perform the duties of his office, and will pay into the county treasury, punctually, all the moneys, fines and forfeitures that come into his hands by virtue of his said office.

4595 (4199) (721) (3937) (389). **Clerk of county court.**—The judges of the county courts are the clerks of their respective courts, but may, at their own expense, employ a clerk, who may do all acts not judicial in their character.

Clerk has no power to take affidavits for warrant of arrest, or to administer oaths.—Lloyd's case, 70 Ala. 32. Mere issuance of alias warrant of arrest, not a judicial act, and may be done by clerk.—McLeod v. McLeod, 75 Ala. 483.

4596 (4200) (722) (3938) (390). **Terms attended by sheriff, etc.; his fees.**—The terms of the county court shall be attended by the sheriff or deputy-sheriff; and, in their absence, some suitable person shall be appointed by the court to act in their stead, whose compensation shall be two dollars a day, to be paid out of the county treasury.

4597 (4201) (718) (3931) (283). **Jurisdiction of county courts.** The county courts have original jurisdiction, concurrent with the circuit and city courts, of all misdemeanors committed in their respective counties.

Jurisdiction.—Gibson's case, 89 Ala. 174. No jurisdiction to impose upon sheriff fine for not executing writ of arrest; sheriff entitled to prohibition to restrain such action.—State v. McDuffie, 52 Ala. 4.

4598 (4202) (723) (4031) (482). **Monthly terms held; notice published.**—A county court, for the trial of misdemeanors, shall be held once a month in each county in this state, at the court-house thereof; the day of the week and month in which the court is held to be fixed by the judge, and ten days' notice thereof to be given by him, prior to the first term, in a newspaper published in the county, or some adjoining county, or by posting the same at the door of the court-house, and three other public places in the county; but a failure to give such notice shall not affect the validity of his judgments or sentences.

4599 (4203) (724). **Courts always open for trial of certain cases.** The county courts in the several counties in this state shall be open, at the discretion of the judges, any day during the week, except Sunday, for the trial of offenses coming within their jurisdiction, in all cases where the party or parties charged cannot give bond and security for their appearance at the regular terms of said courts, or desire an immediate trial; and, in such cases, causes may be continued for good cause shown under the regulations governing the continuances of causes in justices' courts; but nothing herein contained shall be so construed as to prevent or interfere with the regular terms of county courts.

4600 (4204) (4702) (4032) (483). **Warrant of arrest issued by judge or justice on affidavit.**—A party aggrieved, or desiring to bring a charge of misdemeanor before the county court, may apply to the judge thereof, or to some justice of the peace of the county, for a warrant of arrest; and, upon making affidavit in writing, that he has probable cause for believing, and does believe that an offense (designating the misdemeanor by name, or by some other phrase which, in common parlance, designates it) has been committed in said county by C. D. (naming the offender), on the person (or

property, as the case may be) of A. B. (naming the person injured), then the judge of said court, or justice of the peace, shall issue his warrant of arrest.

Affidavit not confined to offenses against the person or property, as form indicates.—Sale's case, 68 Ala. 530. Same particularity as in describing offense by indictment, not required; sufficient to designate offense by name or by some phrase which, in common parlance, describes it.—Brazelton's case, 66 Ala. 96. Time need not be alleged.—Bell's case, 75 Ala. 25. Complaint or affidavit is amendable, if new case not introduced.—Gandy's case, 81 Ala. 71; Perry's case, 78 Ala. 22; Simpson's case, 111 Ala. 6. Prosecutions not by indictment need not conclude against the "peace and dignity of the state." Thomas's case, 107 Ala. 61; Simpson's case, 111 Ala. 6. Affidavits may be amended; amendment should be shown by record.—Ib. It is sufficient to describe offense in affidavit by name only; but if this is not done, and the constituents of the offense are undertaken to be set out, it must be done accurately.—Miles's case, 94 Ala. 106. In preferring criminal charges it is usually sufficient to follow the language of the statute, but this rule does not apply where statute does not fully set out constituents of offense.—Miles's case, 94 Ala. 106. An affidavit which uses words "kill one cow" instead of "killed" or "did kill" is sufficient.—Walker's case, 89 Ala. 74. Ownership of property mortgaged may be laid in mortgagor.—Ib. Justice of peace may issue warrant returnable to county court.—Harden's case, 109 Ala. 50. Affidavit charging assault on "affiant," is sufficient.—Little's case, 89 Ala. 99. Affidavit for petit larceny which names the offense by name only, and properly states name of offender and owner of property, is sufficient.—Williams's case, 88 Ala. 83. Amendable defects waived if not objected to before the justice.—Williams's case, 88 Ala. 83; Gandy's case, 81 Ala. 71.

4601 (4205) (4703) (4033) (484). **Form of warrant.**—The warrant of arrest may be in the following form:

"The State of Alabama, } To any lawful officer of the State of Ala-
——— county. } bama:

You are hereby commanded to arrest C. D., and bring him before me on the —— day of ———, next, to answer the State of Alabama of a charge of (describe the offense as stated in the affidavit), preferred by A. B.

Witness my hand, this —— day of ———, 18—.

D. C., County Judge.

Summon E. F. and G. H., witnesses for the state; J. K. and L. M., witnesses for the defendant.

D. C., County Judge."

4602 (4206) (4704) (4034) (485). **By whom warrant executed.** The sheriff or any constable of the county may execute the warrant of arrest, and bring the defendant before the court; and may also summon the witnesses and serve all other process.

4603 (4207) (4705) (4035) (486). **Speedy trial; continuance.** Justice shall be speedily administered in such court. If the accused and prosecutor are present before the court, or if the accused is present and the prosecutor has notice by having sued out the warrant of arrest, or otherwise, then the case stands for trial, and may be disposed of; but, for good cause shown, the trial may be adjourned to the next succeeding term.

4604 (4208) (4706) (4036) (487). **Bail; form of undertaking.** If the court is not in session when the defendant is brought before the judge thereof, or if the case should be continued for trial at a subsequent term, the defendant may be admitted to bail, on his entering into bond with two good sureties, in such sum as the judge of

the court may prescribe; which bond may be in the following or equivalent words:

"The State of Alabama, ——— county. } We, C. D., and O. P. and Q. R., his sureties, acknowledge ourselves indebted to the State of Alabama, in the sum of ——— dollars; to be void if I, C. D., appear at the next term of the county court of said county, and from term to term until discharged, and answer the charge of (describe the offense), preferred against me by A. B.

Witness our hands, this —— day of ———, 18—.

C. D.
O. P.
Q. R.

Approved:
D. C., County Judge."

4605 (4209) (4707) (4037) (488). **Bail taken by arresting officer.**—In like manner, the judge of the county court must, when he issues his warrant of arrest, indorse on the same the amount for which the defendant may give bail; and in such case the officer arresting must admit the defendant to bail, on his entering into bond, in substance as given in the preceding section, with two good sureties, and approved by such officer.

4606 (4210) (4708) (4038) (489). **Subpœnas; by whom issued and executed.**—The judge of the county court, or any justice of the peace of the county, may issue subpœnas for witnesses, at the instance of the prosecutor or defendant; and it is the duty of the arresting officer, the sheriff, or any constable, to whom they are delivered, to execute and return them to court.

4607 (4211) (4709) (4039) (490). **Form of subpœna.**—Subpœnas may be substantially in the following form:

"The State of Alahama, ———county. } To any lawful officer of said state:

Summon E. F., witness for the state (or J. K., witness for the defendant, as the case may be), to appear before the county court of said county, on the —— day of ———, and testify in a case in said court of the State vs. C. D., for (here describe the offense), and to appear from term to term until discharged.

Witness my hand, this —— day of ———, 18—.

D. C., County Judge
(or S. T., Justice of the Peace)."

4608 (4212) (4710) (4040) (491). **Judgment nisi on default of appearance.**—If the defendant fail to appear as required by his bond, the county court shall enter up a forfeiture against him and his sureties, which may be in the following form:

"The State
vs.
C. D., defendant;
O. P. and Q. R., his sureties. } In the county court of ——— county, —— day of ———, 18—.

In this case, C. D., failing to appear and answer the charge against him for (here describe the offense as in the affidavit), a judgment is entered against him and his said sureties for ——— dollars (the amount of the penalty of the bond), in favor of the state, for the use of the county of ———, unless they appear at the next term

of this court and show cause to the contrary; and it is ordered that notice issue to them."

4609 (4213) (4711) (4041) (492). **Scire facias thereon.**—The county judge shall thereupon issue a notice to said defendant, and cause it, together with a copy of the conditional judgment rendered, to be served on said defendant, or to be left at his last known place of residence or habitation in said county, three days before the next term of his court, which notice may be in the following form:

"The State of Alabama, ——— county. } To any lawful officer of said state:

Notify C. D. that a conditional judgment was rendered against him and his sureties, O. P. and Q. R., of which the inclosed is a copy.

Witness my hand, this —— day of ———, 18—.

C. D., County Judge."

4610 (4214) (4712) (4042) (493). **Judgment final on default.** If the defendant, on being thus notified, fails to appear, or appears but fails to show a satisfactory excuse for his default, and no sufficient cause is shown for a continuance of the case, the court shall render judgment final, which may be in the following form:

"The State vs. C. D., defendant; O. P. and Q. R., his sureties for arrest. } Proceedings for (here describe the offense as in the affidavit).

In this case, the defendant being notified, and offering no sufficient excuse for his default, the judgment is made final against him and his sureties in favor of the State of Alabama, for the use of the county of ———."

4611 (4215) (4713) (4043) (494). **Remission of forfeiture.**—If the defendant appears and submits to trial, the court may release him and his sureties from any part of the forfeiture which seems just; in which case the following should be added to the judgment-entry: "But the court releases the defendants from —— dollars of the said judgment."

4612 (4216) (4714) (4044) (495). **Judgment against defaulting witness.**—If witnesses, after being summoned, fail to appear and testify, as commanded, a conditional judgment may be rendered against them; if state witnesses, in favor of the state, for the use of the county; if defendant's witnesses, in favor of such defendant; and, in such cases, the proceedings may, in all material respects, be made to conform to those given for forfeitures of bail-bonds. The penalty for non-attendance by a witness in the county court is fifty dollars, and the judgment must be entered for that amount.

4613 (4217) (4715) (4045) (496). **Alias warrant of arrest or subpœna.**—When a forfeiture has been taken against a defendant and the sureties on his bail-bond, it shall be the duty of the court to issue another warrant of arrest against the defendant, upon which the same proceedings shall be had as upon the original warrant; and when a forfeiture has been entered against a witness for non-attend-

ance another subpœna may be issued for him, upon which the same proceedings may be had as upon the original subpœna.

4614 (4218) (4716) (4046) (497). **Copy of accusation delivered to defendant on demand.**—When brought before the county court for trial, the accused, if he demands it, must be furnished with a copy of the accusation, as contained in the warrant of arrest.

4615 (4219) (4717) (4047) (498). **Proceedings on demand of trial by jury.**—If he demands a trial by jury, it shall be the duty of the judge to require him to enter into bond, with good sureties, in such sum as such judge may deem sufficient, conditioned for his appearance at the next term of the circuit or city court of the county, to answer the charge; and to return such bond, if given, to the clerk of the court before which the accused is required by it to appear; and if the accused fails to give such bond, he must be committed to the county jail until the next term of the circuit or city court of the county having jurisdiction of the offense, unless he elects, in the meantime, to perform hard labor for the county as provided by law.

When jury trial demanded, the case is transferred, and goes before the grand jury, where indictment is necessary for trial in circuit or city court. Clark's case, 46 Ala. 307; Ex parte Gibson, 89 Ala. 176; Reeves's case, 96 Ala. 33.

4616 (4220) (4718) (4048) (499). **Judge to decide law and fact without jury.**—In trials before the county court, the judge shall determine both the law and the facts, without the intervention of a jury, and shall award the punishment which the character of the offense demands; and no statement of the offense need be made other than that contained in the affidavit and warrant of arrest.

Ex parte Gibson, 89 Ala. 176; Connelly's case, 60 Ala. 89; Collins's case, 88 Ala. 212; Reeves's case, 96 Ala. 33; Thomas's case, 107 Ala. 61.

4617 (4221) (4719) (4049) (500). **Form of judgment of conviction.**—The judgment in case of conviction may be in the following form:

"The State } (Here state the offense by name, or as described in
vs. } the affidavit.)
C. D. }

On hearing the evidence the court is satisfied of the guilt of defendant, and awards the following punishment: (Here state the punishment imposed), and the costs of the proceedings.

D. C., Judge of County Court."

4618 (4222) (4720) (4050) (501). **Judgment discharging defendant.**—If the defendant is acquitted, the judgment-entry must be that the defendant is discharged.

4619 (4223) (4721) (4051) (502). **When judgment for costs against prosecutor.**—If the prosecution appears to the court to be malicious or frivolous, the court shall tax the prosecutor with the costs, in which case the judgment-entry may be as follows:

"The State } Prosecution for (here describe the offense by name, or
vs. } some familiar description), instituted by A. B.
C. D. }

In this case, the prosecution appearing to be malicious (or frivolous), the costs are taxed against A. B., the prosecutor."

4620 (4224) (4722) (4052) (503). **Jeofails and amendments.**—It shall be no objection to the proceedings of the county court, either in that court or elsewhere, that they are imperfect or inaccurate; and when its proceedings are reviewed on appeal or certiorari, all amendable errors shall be regarded as amended, so as to present only the substantial inquiry of the guilt or innocence of the accused.

Johnson's case, 105 Ala. 114; Tatum's case, 66 Ala. 465; Blankenshire's case, 70 Ala. 10. All amendments allowed which do not introduce a new case. Gandy's case, 81 Ala. 71; Tatum's case, 66 Ala. 465; Perry's case, 78 Ala. 22; Simpson's case, 111 Ala. 6. Amendments should be shown by the record.—Ib. Where affidavit fails to name party assaulted, or prosecutor, and complaint filed on appeal sets out name of such party, there is no variance.—Little's case, 89 Ala. 99.

4621 (4225) (4723) (4053). **Issue and return of executions.** Executions issued from the county court shall be made returnable to a term of such court six months after the rendition of the judgment upon which the same is issued, and six months shall intervene between the issue and return of any subsequent execution from such court.

4622 (4226) (4724) (4054) (504). **Appeal to circuit or city court; appeal bond.**—In all cases of conviction in the county court, the defendant shall have the right of appeal to the circuit or city court of the county, on entering into bond, with two or more sufficient sureties, to appear at the term of the court to which the appeal is taken, and from term to term until discharged; the bond to be in such penalty as the judge of the county court may prescribe, and to be approved by him.

Appeal cannot be dismissed because county court had adjourned before appeal sued out.—Mobley's case, 53 Ala. 646. Bond is a condition precedent to the exercise of the right of appeal.—Ex parte Reese, 112 Ala. 63.

4623 (4227) (4725) (4055) (505). **Transcript, etc., returned to court.**—When an appeal is taken under the preceding section, the judge of the county court shall make out a copy of all the proceedings had in his court, except the subpœnas for witnesses and the appeal bond, certify the same as correct, and hand the transcript, together with the appeal bond, to the clerk of the circuit or city court, who shall place the same on his trial-docket of criminal cases.

4624 (4228) (4726) (4056) (506). **Subpœnas for witnesses on appeal.**—In cases of appeal from the county court, the judge of the court shall issue subpœnas for such witnesses as may be required, both for the state and for the accused, returnable to the next term of the court, to which the appeal is taken; which subpœnas shall be executed by the sheriff and returned to such circuit or city court; and if witnesses so summoned fail to appear and testify as required, they shall be liable to the same penalties, forfeitures and proceedings, as if the subpœnas had been issued out of the circuit or city court.

4625 (4229) (4727) (4057) (507). **Forfeiture of appeal bond; alias warrant of arrest to issue.**—If the defendant fails to appear at the circuit or city court as required by the appeal bond, he shall be liable to the same penalties, forfeitures and proceedings, as on a

forfeited bail-bond taken in that court; and a new warrant of arrest may issue from that court, without any other authority therefor.

4626 (4230) (4728) (4058) (508). **Arrest on warrant as on capias.** Such warrant of arrest must be directed to any sheriff of the State of Alabama; and when the defendant is arrested, he must be dealt with in all respects as if the arrest had been made on capias from the circuit court.

4627 (4231) (4729) (4059) (509). **Trial of appeal de novo; statement of cause of complaint.**—The trial in the circuit or city court shall be de novo, and without any indictment or presentment by the grand jury; but the solicitor shall make a brief statement of the cause of complaint, signed by him, which may be in the following form:

"The State of Alabama, } In the circuit (or city court),——— term,
———— county. } 18—. On appeal from the county court.

The State of Alabama, by its solicitor, complains of C. D. that, within twelve months before the commencement of this prosecution, he did (here describe the offense as in cases of indictment).

G. H., Solicitor."

Brief statement of the "complaint," signed by the solicitor, is essential to trial on appeal; and proceeding without it, unless waived, is erroneous. Moss's case, 42 Ala. 546. But parties may, by consent, dispense with filing of complaint by solicitor and substitute for it affidavit on which warrant for arrest issued.—Carlisle's case, 76 Ala. 75. This "statement of cause of complaint" is analogous to an information at common law, and may be amended by leave of court.—Tatum's case, 66 Ala. 465. Complaint need not conclude "against the peace and dignity of the state."—Simpson's case, 111 Ala. 6; Thomas's case, 107 Ala. 61. Any inaccuracies or irregularities are amendable, but an absolutely void affidavit will not support a complaint or prosecution. Miles's case, 94 Ala. 106. It is usually sufficient in preparing criminal charges to follow language of statute, but not so if statute does not set out constituents of offense.—Ib. Defendant has constitutional right to demand nature and cause of accusation against him.—Ib. An affidavit which was assailable in justice court, but was not objected to, is amendable on appeal and will support complaint.—Williams's case, 88 Ala. 80; Gandy's case, 81 Ala. 68. Complaint filed by solicitor in county court is amendable on appeal if it does not make a new prosecution.—Perry's case, 78 Ala. 22; Simpson's case, 111 Ala. 6.

4628 (4232) (4730) (4060) (510). **Practice, evidence, etc., same as in other cases.**—On the trial of such appeals, the court shall be governed by the same rules, as to evidence, practice, finding of the jury, and punishment, as if the case had originated in that court.

4629. Forfeiture for failing to hold county court; how recovered. Feb. 6, 1895, p. 402, §§1, 2.
Any judge of the county court who neglects or fails to hold any regular term of such court, or who absents himself before the business of such court is disposed of, forfeits to the county the sum of twenty-five dollars for each day he is thus absent or fails to attend, to be recovered of him and the sureties on his official bond, on five days' notice, in the circuit or city court, upon motion by the solicitor in the name of the county; but such recovery cannot be had if such failure to attend or absence was on account of sickness of such judge or his family, or inevitable accident, or of an epidemic or contagious disease, or well-grounded apprehension thereof.

ARTICLE 4.

JUSTICES OF THE PEACE, AND PROCEEDINGS BEFORE THEM.

4630 (4233) (4628) (3932) (384). **Jurisdiction of justices of the peace.**—Justices of the peace have, in their respective counties, concurrently with the county courts, jurisdiction of the following offenses: Violations of Sunday, vagrancy, assaults, assaults and batteries, and affrays, in which no stick or other weapon is used; and, when the value of the commodity which is the subject of the crime does not exceed ten dollars, of larceny, whether at common law, or by statute; obtaining money by false pretenses or token with intent to defraud another, embezzlement, and receiving stolen or embezzled goods, knowing them to be stolen or embezzled; and for failure to work on public road after legal notice, and of offenses for cruelty to animals, and of public drunkenness.

Have jurisdiction of petit larceny concurrent with circuit and city court, when value does not exceed ten dollars, and may sentence to hard labor not exceeding twelve months.—Ex parte Hixon, 41 Ala. 410. No jurisdiction of assaults and batteries with weapons; hence judgment in such offense is void, and no bar to subsequent indictment.—Danzey's case, 68 Ala. 296. No jurisdiction to impose hard labor for non-payment of costs.—Ex parte McKivett, 55 Ala. 236. See ex parte Sam, 51 Ala. 34. Before amendment of statute, had no jurisdiction of offense for cruelty to animals.—Horton's case, 80 Ala. 8. Except preliminary proceeding, no jurisdiction to hear cause out of his beat. Ex parte Davis, 95 Ala. 9. Judgment valid on its face in case of which justice had jurisdiction of person and of offense cannot be assailed, on habeas corpus, by oral proof.—Ib. Jurisdiction of notary public ex officio justice of peace in preliminary proceeding coextensive with justice of peace.—Matthews's case, 96 Ala. 62. Justice has no power to bind defendant over to circuit court in cases of which he has final jurisdiction.—Ex parte Pruitt, 99 Ala. 225.

Feb. 18. 1891. p. 1143.

4631. No jurisdiction to sentence to hard labor for costs.—It shall not be lawful for any justice of the peace, or notary public with the powers of a justice of the peace, to sentence any person to hard labor for the non-payment of costs.

4632 (4234) (759, 4698) (843) (713). **Required to keep docket and exhibit it to grand jury; other duties.**—It is the duty of every justice of the peace and notary public having and exercising the jurisdiction of justices of the peace—

1. To keep a docket of all criminal cases tried, which docket shall set forth the nature of each case, the judgment rendered therein, an itemized copy of the bill of costs, by whom and of whom the fine and costs were collected, and the disposition made thereof; and such justice of the peace and notary public must attend in person, or make a report in writing of his docket to the grand jury of his county, for their inspection during each term of the circuit or city court.

2. To perform such other duties as are, or may be required of him by law.

4633 (4235) (4694) (4024) (475). **Copy of accusation delivered to defendant on demand.**—When a person is arrested and brought before a justice of the peace, charged with a public offense, of which such justice has jurisdiction under the provisions of this Code, he must be furnished, if he demand it, with a copy of the accusation, as contained in the warrant of arrest.

4634 (4236)(4699) (4028) (479). **Forms; same as in county court.** The forms for proceedings before the county court, under the provisions of the preceding article, or others substantially the same, may be used by a justice of the peace in cases tried before him.

The initiatory step in criminal proceedings, by which the jurisdiction of a justice of the peace is called into exercise, is a complaint on oath, charging the person named with the commission of a specified offense.—Drake's case, 68 Ala. 510. And all such proceedings before justices in the exercise of enlarged jurisdiction must conform to these statutory provisions.—Ib. Insufficient affidavit as to wantonly killing an animal; when charges no offense, and effect on appeal.—Blankenshire's case, 70 Ala. 10. Affidavit "that he has reason for believing, and does believe," etc., sufficient.—Sale's case, 68 Ala. 530. See citations to section 4600. Affidavit may be amended, but not so as to make a different offense.—Simpson's case, 111 Ala. 6. Affidavit charging assault on "affiant" sufficient.—Little's case, 89 Ala. 99; Gandy's case, 81 Ala. 71; Perry's case, 78 Ala. 22. Affidavit of petit larceny sufficient that sets out name of offense as commonly known, name of defendant, property stolen and owner thereof. Williams's case, 88 Ala. 83. Insufficient affidavit.—Miles's case, 94 Ala. 106; Gandy's case, 81 Ala. 71.

4635 (4237) (4697) (4027) (478). **Justice to decide law and facts without jury.**—In all trials before a justice of the peace of causes which are within his jurisdiction, he must determine both the law and the facts without the intervention of a jury, and award the punishment which the offense may demand.

May sentence to hard labor not exceeding twelve months.—Ex parte Sam, 51 Ala. 34. But not for costs.—Ex parte McKivett, 55 Ala. 236. Duty of justice under this section.—Ex parte Dunklin, 72 Ala. 241. If justice has jurisdiction of person and offense and defendant does not demand a jury, he must try the case finally—cannot bind over to circuit court.—Ex parte Pruitt, 99 Ala. 225.

4636 (4238) (4695) (4025) (476). **Proceedings when defendant demands trial by jury.**—If the defendant demands a trial by jury, he must be required to enter into bond, with good sureties, conditioned for his appearance at the next term of the circuit or city court of the county to answer the charge; and, failing to give such bond, must be committed to the county jail until the next term of the circuit or city court having jurisdiction of the offense, unless he elect, in the meantime, to perform hard labor for the county as provided by law.

Justice has no jurisdiction to try a party demanding a jury, but must bind him over, or hold him till next term of circuit court.—Ex parte Dunklin, 72 Ala. 241. If justice has jurisdiction, and defendant does not demand jury, he has no authority to bind over, but must try the cause.—Ex parte Pruitt, 99 Ala. 225.

4637 (4239) (4696) (4026) (477). **Trial; continuances.**—If the accused and the prosecutor are both present, and also the witnesses for the prosecution and defense, and the accused does not demand a trial by jury, the trial must proceed before the justice, unless, for good cause shown, he continues it to some other day not more than ten days distant.

4638 (4240) (3611, 3614) (3213, 3216) (2774, 2777). **Subpœnas and attachments for witnesses.**—The justice, on the application of either party, must issue subpœnas for witnesses, stating therein the name of the party by whom the witness is summoned, and the time and place of trial, which must be executed in the same manner as subpœnas in civil cases; and if any witness duly summoned fails to

attend, he may be compelled by attachment to appear and give evidence.

4639 (4241) (3613, 3614) (3215, 3216) (2776, 2777). **Proceedings against defaulting witness.**—If any witness, duly summoned, fails to attend, a forfeiture may be taken against him and enforced as in civil cases before such justice.

4640 (4242) (4700) (4029) (480). **Appeal to circuit or city court; appeal bond.**—In cases tried before a justice of the peace, the defendant, if convicted, shall have the right to appeal to the next ensuing term of the circuit or city court of the county, on entering into bond, with sufficient sureties, in such sum as the justice may require, conditioned that he will appear at the court to which the appeal is taken, until discharged by due course of law.

Reeves's case, 96 Ala. 33; Ex parte Reese, 112 Ala. 63.

As amended Dec. 7, 1896, p. 80.

4641 (4243) (4701) (4030) (481). **Appeal; how tried.**—The trial in the circuit, city, county or criminal court, on appeal from a judgment rendered by a justice, shall be de novo, and shall be governed in all respects by the rules and regulations prescribed for the trial of appeals from the county court.

CHAPTER 143.

CRIME AGAINST NATURE. 4642, 4643.

4642 (4020) (4191) (3604) (63). **Punishment of crime against nature.**—Any person, who commits a crime against nature, either with mankind or with any beast, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than ten years. (Form 83.)

Indictment stating defendant, "against the order of nature, attempted carnally to know a certain beast, to wit, a cow," is sufficient.—Bradford's case, 104 Ala. 68. Confessions are prima facie inadmissible, and are never so without proof of the "corpus delicti" aliunde, though direct proof not required. Bradford's case, 104 Ala. 68. Charge as to reasonable doubt and probability of innocence.—Croft's case, 95 Ala. 3.

4643 (4021) (4896) (4194) (642). **Proof of crime against nature.** To sustain an indictment for crime against nature, proof of emission is unnecessary.

CHAPTER 144.

DEAD BODIES AND GRAVES, OFFENSES CONCERNING. 4644–4649.

4644 (4023) (4193) (3606) (65). **Removing dead body from grave.**—Any person, who from wantonness, or for the purpose of

dissection, or sale, removes the dead body of any human being from its place of interment, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. (Form 72.)

4645 (4024) (4194) (3607) (66). **Same; exception as to physicians and surgeons.**—Licensed physicians and surgeons, to whom the bodies of criminals executed for capital offenses are delivered pursuant to law, or to whom the bodies of other persons are delivered by or with the consent of their relatives, are not within the provisions of the preceding section.

4646 (4025) (4195) (3608) (67). **Buying such dead bodies.**—Any person, who purchases or receives from another the dead body of any human being, knowing that it was disinterred contrary to law, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars.

4647 (4026) (4196) (3609) (68). **Violating grave with intent to steal or remove dead body, etc.**—Any person, who opens any place of interment, with intent to remove the dead body of any human being for the purpose of selling or dissecting it, or with intent to steal the coffin, or any part thereof, or the vestments, or any other article interred with the body, or for the purpose of obtaining money or any thing of value from the relatives or friends of the deceased for the return of the body, or for malice, revenge, or ill will towards the deceased, or his or her friends, must, on conviction, be imprisoned in the penitentiary for not less than one, nor more than five years.

4648 (4027) (4197) (3610) (69). **Mutilating dead bodies.**—Any person, who wantonly mutilates the dead body of any human being, must, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than one year; but the provisions of this section do not apply to dissections by physicians and surgeons.

4649 (4028) (4198) (3611) (70). **Defacing tombstone, trees, shrubbery, etc.**—Any person, who willfully or maliciously injures, defaces, removes, or destroys any tomb, monument, gravestone, or other memorial of the dead, or any fence or inclosure about any tomb, monument, gravestone, or memorial, or who willfully destroys, removes, cuts, breaks, or injures any tree, shrub, or plant, within such inclosure, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than one year.

CHAPTER 145.

DEFINITIONS. 4650–4652.

4650 (3699) (4094) (3540) (1). **Public offenses defined.**—A public offense is an act or omission forbidden by law, and punishable as provided in this Code.

4651 (3700) (4097) (3543) (4). **What penal acts or omissions not public offenses.**—Acts or omissions to which a pecuniary penalty is attached, recoverable by action by a person for his own use, or for the use, in whole or in part, of the state, or of a county, or corporation, are not public offenses within the meaning of this Code.

4652 (3701) (4095, 4096) (3541, 3542) (2, 3). **Felonies and misdemeanors defined.**—A felony, within the meaning of this Code, is a public offense which may be punished by death, or by imprisonment in the penitentiary; all other public offenses are called misdemeanors.

Section construed as to felonies.—Clifton's case, 73 Ala. 473. Misdemeanor defined.—Hunter's case, 67 Ala. 83. Attempt to commit misdemeanor or felony is misdemeanor.—Wolf's case, 41 Ala. 412; Berdeaux v. Davis, 58 Ala. 611.

CHAPTER 146.

DISTURBING FEMALES, RELIGIOUS WORSHIP, AND SCHOOL ASSEMBLIES. 4653–4655.

4653 (4032) (4200) (3613) (72). **Disturbing women at public assembly, etc.**—Any person, who, by rude or indecent behavior, or by profane or obscene language, willfully disturbs any woman at a public assembly, met for instruction or recreation, or in a railroad-car, steamboat, or in any other public conveyance, or at a depot, landing, or other place frequented by the traveling public, must, on conviction, be fined not more than two hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. (Form 37.)

The indictment must pursue the words of the statute, or the Code form, or aver every material constituent of the offense except venue and time.—Smith's case, 63 Ala. 55. Engaging in a fight does not necessarily render accused guilty of disturbing women; conduct must be rough, uncivil or offensive. Reeves's case, 96 Ala. 33.

4654 (4033) (4199) (3612) (71). **Disturbing religious worship.** Any person, who willfully interrupts or disturbs any assemblage of people met for religious worship, by noise, profane discourse, rude or indecent behavior, or any other act, at or near the place of worship, must, on conviction, be fined not less than twenty, nor more than two hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. (Form 38.)

Act causing disturbance must be willful or intentional; not sufficient if done recklessly or carelessly.—Harrison's case, 37 Ala. 154; Brown's case, 46 Ala. 175; Lancaster's case, 53 Ala. 398. Natural tendency of act must be to disturb some, if only one, of the worshipers.—Lancaster's case, 53 Ala. 398. Sufficient if disturbance made while people assembling or dispersing.—Kinney's case, 38 Ala. 224; Lancaster's case, supra. Evidence of previous bad character as disturber of public worship not admissible by state, except in rebuttal of good character.—Harrison's case, 37 Ala. 154; Brown's case, 46 Ala. 175. Evidence that others disturbed congregation, without objection by the members, inadmissible.—Harrison's case, supra. Permission to speak no excuse for violent and insulting discourse, though not called to order.—Lancaster's case, 53 Ala. 398. Declarations of defendant while going to church, "I am going to stay till I get satisfaction," admissible.—Price's case, 107 Ala. 161. Charge requesting acquittal if defendant did what he did heedlessly or recklessly—that is, carelessly—is properly refused.—Johnson's case, 92 Ala. 82 (explaining Harrison's case, 37 Ala. 154). Witness cannot testify that he was disturbed—he must state the facts.—Morris's case, 84 Ala. 457. Every sect or denomination of religionists is the arbiter of its own doctrinal tenets—questions of orthodoxy or heterodoxy are to be decided by the church judicatories, without appeal to civil courts.—Ib. A majority faction of a church are not guilty of disturbing religious worship by remonstrating against conduct of minority faction about church differences.—Ib. Wearing a false mustache in church which causes laughter will support a conviction. Williams's case, 83 Ala. 68. The presumption of intentional or willful disturbance may be rebutted by lawful excuse, but not by proof of a secret intention.—Ib. A conviction may be had on proof that defendant willfully and intentionally engaged in a fight.—Goulding's case, 82 Ala. 48. Purpose or intent to disturb is not necessary, but the doing of an act, the natural consequence of which is to disturb, and which does disturb, is sufficient.—Salter's case, 99 Ala. 207, qualifying and limiting Harrison's case, 37 Ala. 154.

4655 (4034). **Disturbing people met for school purposes or holiday.**—Any person, who willfully disturbs any school, or other assembly of people, met for school purposes, or for amusement or recreation on a holiday for a school, must, on conviction, be fined not less than five, nor more than fifty dollars.

CHAPTER 147.

DRUNKENNESS. 4656.

4656 (4035). **Appearing in public or at private residence while drunk or intoxicated.**—Any person, who, while intoxicated or drunk, appears in any public place where one or more persons are present, or at or within the curtilage of any private residence, not his own, where one or more persons are present, and manifests a drunken condition by boisterous or indecent conduct, or loud and profane discourse, must, on conviction, be fined not less than five, nor more than one hundred dollars, to be paid in money only. As amended Feb. 28, 1889, p. 92.

"Rude or indecent behavior" defined.—Reeves's case, 96 Ala. 33.

CHAPTER 148.

DUELING. 4657, 4658.

4657 (3767) (4104) (3551) (11). **Challenge to fight duel.**—Any person, who gives, accepts, or knowingly carries a challenge, in

writing or otherwise, to fight in single combat, with any deadly weapon, either in or out of this state, must be punished, on conviction, by imprisonment in the penitentiary for two years. (Form 27.)

Ivey's case, 12 Ala. 276.

4658 (3768) (4105) (3552) (12). **Publishing another as a coward for not fighting or accepting challenge to fight.**—Any person, who, in any newspaper, handbill, or other advertisement, written or printed, publishes or proclaims another person as a coward, or uses any other opprobrious or abusive language, for not accepting a challenge to fight a duel, or for not fighting a duel, must be punished, on conviction, by a fine of not less than two hundred, nor more than five hundred dollars, and by imprisonment in the county jail, or hard labor for the county, for not less than six, nor more than twelve months.

CHAPTER 149.

EMBEZZLEMENT AND LIKE OFFENSES. 4659–4673.

4659 (3795) (4377) (3717) (171). **Embezzlement by officer, clerk, agent, servant, or apprentice.**—Any officer, agent, or clerk of any incorporated company, or municipal corporation, or clerk, agent, servant, or apprentice of any private person or persons, who embezzles or fraudulently converts to his own use, or to the use of another, or fraudulently secretes with intent to convert to his own use, or to the use of another, any money or property which has come into his possession by virtue of his office or employment, must be punished, on conviction, as if he had stolen it.* (Form 40.)

This section (and sections 4660 and 4661) embraces some acts which were larceny at common law, as well as acts which were breaches of trust.—Insurance Co. v. Tunstall, 72 Ala. 142. When embezzlement under this section a felony and when a misdemeanor.—Washington's case, 72 Ala. 272. The gist of this offense.—Ib. 276. A wrongful conversion is an unauthorized assumption and exercise of the right of ownership over goods and personal chattels belonging to another, to the alteration of their condition, or the exclusion of the owner's rights.—Noble's case, 59 Ala. 79. Who is an agent within the meaning of the statute.—Hinderer's case, 38 Ala. 415; Pullen's case, 78 Ala. 31. Wife may be agent without husband's consent.—Ib. Statute not intended to convert common-law larceny into embezzlement.—Holbrook's case, 107 Ala. 154; Washington's case, 106 Ala. 5. Person having bare custody of goods of another may commit larceny of them.—Ib. Mail-rider not the agent of sender of letter.—Brewer's case, 83 Ala. 113. Non-transferable labor tickets or checks not subject of embezzlement by payee.—St. Clair's case, 100 Ala. 61. Animus furandi necessary.—Morrisette's case, 77 Ala. 71; Morningstar's case, 55 Ala. 148. Three things must coexist: (1) Accused must be agent; (2) property must come into his hands by reason of agency; (3) he must have converted or secreted with intent to convert.—Pullam's case, 78 Ala. 31. **Evidence.**—Lowenthal's case, 32 Ala. 589; Washington's case, 72 Ala. 272. Proof of failure to account for funds similarly received.—Lang's case, 97 Ala. 41; Stanley's case, 88 Ala. 154. Proof that defendant procured cotton receipt to be issued in his son's name, which he afterwards delivered to the owner, will not support conviction.—Penney's case, 88 Ala. 105. **Indictment** should allege

*As amended by joint committee.

defendant to be agent, or servant, etc., of named principal; and it is well, though not necessary, to allege ownership of property.—Washington's case, 72 Ala. 272. May be joined with larceny in separate count.—May's case, 30 Ala. 32; Butler's case, 91 Ala. 87. Election in such case not required unless it appears that the different counts are founded on separate transactions.—Butler's case, supra; May's case, supra. Sufficiency of description of articles embezzled. Ib. (Money); Gady's case, 83 Ala. 51; Huffman's case, 89 Ala. 33. Code form sufficient.—May's case, 30 Ala. 32; Lowenthal's case, 32 Ala. 589; Lang's case, 97 Ala. 41.

4660 (3796) (4383) (3719) (173). **Embezzlement or fraudulent secretion by officer, etc., of incorporated bank.**—Any officer, agent, clerk, or servant of any bank incorporated under any law of this state, who embezzles or fraudulently converts to his own use, or fraudulently secretes with intent to convert to his own use, any money, property, or effects belonging to, or in the possession of such bank, or deposited therein, must be punished, on conviction, as if he had stolen it. (Form 40.)

Indictment alleging the embezzlement of money is not sustained on proof of conversion of a check.—Carr's case, 104 Ala. 43. Indictment under Code form, for embezzlement of deposits of a bank, is sufficient to authorize conviction for the conversion of money of the bank, or on deposit therein, whether general or special, and the owner need not be averred.—Reeves's case, 95 Ala. 31. The possession and control of accused need not be exclusive of other officers of the bank, and it is immaterial whether his acts are open or secret.—Ib. If converted under guise of fraudulent loan, with consent of other officers of bank, it would be no defense.—Ib. It is permissible to show other fraudulent transactions of the bank than the one on trial, of which the defendant must have had knowledge.—Ib. See note to preceding section.

4661 (3797) (4384) (3720) (174). **Embezzlement or fraudulent secretion by banker, factor, attorney, or other agent.**—Any private banker, commission merchant, factor, broker, attorney, bailee, or other agent, who embezzles, or fraudulently converts to his own use, or fraudulently secretes with intent to convert to his own use, any money, property, or effects deposited with him, or which have come into his possession by virtue of any bailment for any purpose, or the proceeds of any property sold by him for another, must be punished, on conviction, as if he had stolen it. Feb. 28, 1889, p. 68.

See note to section 4659. This section applies only to bailments in which the parties stand to each other in a fiduciary relation, the bailee having the possession wholly and exclusively for the benefit of the bailor, and not against hirer of domestic animal, who sells animal during term of bailment.—Watson's case, 70 Ala. 13 (cured by amendment). Defendant having received a horse to keep till it got well, is guilty of embezzlement if he sell horse without owner's consent.—Butler's case, 91 Ala. 87. Where bailor and bailee jointly interested in property not within the statute.—Lang's case, 97 Ala. 41 (cured by amendment). Allegation that defendant was a private banker sustained by proof that he was member of partnership doing private banking business. Carr's case, 104 Ala. 43.

4662 (3798) (4379) (3718) (172). **Embezzlement by common carrier.**—Any common carrier or other person, to whom any money or property has been delivered to be carried for hire, and who embezzles or fraudulently converts to his own use, or fraudulently secretes with intent to convert to his own use, such money or property, or any part thereof, must be punished, on conviction, as if he had stolen it.

4663 (3799) (4381). **Embezzlement by county superintendent of education.**—Any county superintendent of education, to whom any money or property has been delivered as county superintendent

of education, who embezzles or fraudulently converts to his own use such money or property, or any part thereof, must be punished, on conviction, as if he had stolen it, and shall forfeit his office.

4664 (3800) (4382). **Embezzlement by using school money for other than school purposes.**—Any person, into whose hands, or under whose control, any of the public-school money may come, who uses or permits the use of the same, or any part thereof, except for purposes of the public schools, and in accordance with the law regulating the public schools, and providing for the disbursement of the public-school money, is guilty of embezzlement, and, on conviction, must be punished as if he had stolen it.

4665 (3801) (4261) (3645) (103). **Embezzlement by state treasurer, or person employed in his office.**—If the state treasurer, or any other person employed in his office, embezzles, or fraudulently converts to his own use, or fraudulently secretes with intent to convert to his own use, any money, property, or effects belonging to the state, and which has come to his possession by virtue of his office or employment, he must be punished, on conviction, as if he had stolen it.

Noble's case, 59 Ala. 73.

4666 (3802) (4266). **Embezzlement by tax-collector in failing to make returns and forward tax money.**—Any tax-collector, who fails to make returns and forward the tax money in his hands, from time to time, to the proper authorities, as provided by law, except for good cause, is guilty of embezzlement of public funds, and is liable, on conviction, to a fine of not exceeding ten thousand dollars, and imprisonment in the penitentiary not exceeding two years.

Indictment may allege defendant embezzled "about" a named sum, and proof not required of precise sum alleged.—Britton's case, 77 Ala. 202. Failure to make monthly reports of collections, as required by law, is a felony, irrespective of amounts of default; though failure to make final report and settlement is a misdemeanor.—Ib. The officer is not criminally liable for the acts of his deputy or agent.—Ib. Officer's stub-book and abstract-book of his office admissible against him.—Ib. Judgment in civil case against officer and his bondsmen not admissible against him in criminal prosecution.—Ib.

4667 (3804). **Embezzlement by collector of municipal taxes.** Any officer or person charged with the collection of taxes, general or special, for any city, town, or municipal corporation, who embezzles, or fraudulently converts to his own use, or fraudulently secretes with intent to convert to his own use, such taxes, or any portion thereof, must, on conviction, be punished as if he had stolen the same.

4668 (3803, 3805) (4275, 4389) (3724). **Embezzlement by public officers.**—Any probate judge, clerk of a court of record, register in chancery, sheriff, coroner, tax-collector, county treasurer, trustee of public schools, notary public, justice of the peace, constable, or other public officer, who knowingly converts to his own use, or permits another to use any of the revenue of the state, or of any county thereof, or any money paid into his office, or received by him in his official capacity, is liable to indictment, and, on conviction, must be punished as if he had stolen it.

The minute entry of commissioners' court of settlement between court and county treasury, is admissible against treasurer on charge of embezzlement. Monroe's case, 111 Ala. 15. When one prosecution bar to another prosecution for the same fund.—Ib. A probate judge has no authority to make general deposits of public funds in a bank.—Alston's case, 92 Ala. 124. The effect of the statutes is to make the officers themselves the sole custodians of the public funds, and to prohibit them from allowing another to use such funds. Ib. If an officer, having exercised the highest degree of care, is robbed of the specific money of the state, he and his bondsmen are not liable therefor; but if he had exchanged the state's money for other, the rule would be different. Ib.; Houston's case, 78 Ala. 576. Punishment.—Herrington's case, 87 Ala. 1. Right to deposit.—Alston's case, 92 Ala. 124. Mingling state or county funds with others wrongful.—Ib.

4669 (3806). **Prima facie evidence of embezzlement by tax-collector under preceding section.**—The failure of any tax-collector to pay over or produce any money collected by him, either as state or county taxes, after demand by the state or county treasurer, shall be prima facie evidence against such tax-collector of embezzlement by him.

4670 (3807) (4387) (3723) (177). **Failure of private banker, broker, etc., to pay over money on demand.**—Any private banker, commission merchant, factor, broker, attorney, superintendent, general manager, or managing agent of any corporation, or other agent, who sells or disposes of property for another, and refuses, for three days after demand made by the person entitled to the same, his agent, or attorney, to pay the amount to which such person is entitled, must, on conviction, be fined not more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.*

4671 (3808) (4385) (3721) (175). **Receiving embezzled property.** Any person, who buys or receives property, knowing that it has been embezzled, or fraudulently converted, or fraudulently secreted, with intent to prevent the recovery thereof, or to defraud the rightful owner, must be punished, on conviction, as if he had stolen it.

4672 (3809) (4386) (3722) (176). **Conviction of receiver before embezzler.**—An offender may be tried and convicted under the preceding section, although the person who embezzled the property has not been tried and convicted.

4673 (3810) (4811) (4137) (587). **Description of property in indictments.**—In an indictment for embezzlement, or other offenses under this chapter, it is sufficient to describe the property in general terms, as "money," "bank-notes," "checks," "bills of exchange," or other evidences of debt, of or about a certain amount.

Indictment following Code form under this section sufficient.—Lang's case, 97 Ala. 41. A count in an indictment for embezzlement which, after following Code form, adds, "which said money had come into the possession of the defendant by virtue of a bailment for the mutual benefit of the bailor and defendant" is bad on demurrer.—Lang's case, 97 Ala. 41. Indictment for "money to about the amount of $150.00" is sufficient.—Huffman's case, 89 Ala. 33. Indictment alleging embezzlement of "Eighty ($80.00) Dollars in money, currency of U. S." is sufficient.—Gady's case, 83 Ala. 51.

*As amended by joint committee.

CHAPTER 150.

ELECTIONS, OFFENSES CONCERNING. 4674–4698.

Feb. 21, 1893, p. 837, §16. **4674. Failure of secretary of state to certify nominations.**—Any secretary of state, who shall willfully fail or refuse to certify to any judge of probate any nomination which he is required by law to certify to such judge of probate, shall be guilty of a felony, and, on conviction, must be imprisoned in the penitentiary for not less than one, nor more than five years.*

Ib. §17. **4675. Falsely making or fraudulently destroying certificate of nomination.**—Any person, who falsely makes or fraudulently destroys any certificate of nomination, or any part thereof, or files any certificate of nomination knowing the same, or any part thereof, to be false, shall be guilty of a felony, and, on conviction, must be imprisoned in the penitentiary, not less than one, nor more than five years.

Ib. **4676. Suppressing nomination.**—Any person, who suppresses any nomination which has been duly filed, shall be guilty of a felony, and, on conviction, must be imprisoned in the penitentiary not less than one, nor more than five years.

Ib. **4677. Forging inspector's name on ballot.**—Any person, who forges or falsely writes the name or initials of any inspector of elections on any ballot, shall be guilty of a felony, and, on conviction, must be imprisoned in the penitentiary not less than one, nor more than five years.

Ib. §27. **4678. Removing, etc., booth, convenience, or card of instruction.** Any person, who, during or before an election, willfully removes, tears down, destroys, or defaces any booth or compartment or any convenience provided for the purpose of enabling electors to prepare their ballots, or any card printed for the instruction of electors, must, upon conviction, be fined not less than ten, nor more than five hundred dollars.

Ib. §37. **4679. Making false declaration as to inability to prepare ballot.** Any person, who willfully makes to the inspectors of election a false declaration asserting his inability to prepare his ballot without assistance, must, on conviction, be imprisoned in the penitentiary not less than one, nor more than five years.

Ib. §38. **4680. Deceiving elector in preparation of ballot.**—Any inspector or marker, who willfully deceives any elector in preparing his ballot, must, on conviction, be imprisoned in the penitentiary not less than one, nor more than five years.

Ib. §39. **4681. Disclosing vote of elector.**—Any officer of election, who discloses how any elector may have voted at any election after acquiring knowledge of such vote by virtue of such office, must, on

*As amended by joint committee.

conviction, be fined not less than ten, nor more than one hundred dollars.

4682. Disclosing or removing ballot; interfering with or influencing elector; remaining in booth, etc.—Any elector, who allows his ballot to be seen by any person, or who takes or removes, or attempts to take or remove, any ballot from the polling-place before the close of the polls, or places any mark on his ballot by which it may be identified; or any person who interferes with any elector when inside the polling-place, or when marking the ballot, or unduly influences, or attempts to unduly influence, any elector in the preparation of his ballot; or any elector who remains longer than the time allowed by law in the booth or compartment after being notified that his time has expired; or any person who induces, or attempts to induce, any elector to show how he marks, or has marked, his ballot, or who prints, or procures to be printed, or has in his possession, any copy of the ballot prepared to be voted, must, on conviction, be fined not less than ten, nor more than one hundred dollars. Ib. §43.

4683. Judge of probate failing to perform duty.—Any judge of probate, or other officer, on whom the duties of the judge of probate may have temporarily devolved, who knowingly and willfully neglects, fails, or refuses to perform the duties prescribed by law in respect to the preparation of the official ballot for any election, must, on conviction, be fined not less than five hundred, nor more than two thousand dollars. Ib. §45.

4684. Inspector refusing to appoint markers, etc.—Any inspector of election, who willfully fails or refuses to appoint markers from the opposing political parties, as required by law, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars. Feb. 18, 1895, p. 676, §3.

4685 (4178) (4279). **Failure of sheriff to give notice of special election.**—Any sheriff, who fails to give notice of a special election ordered by the governor, as required by law, is guilty of a misdemeanor.

4686 (4179) (4280). **Failure of officer to serve notices in contests of elections.**—Any sheriff or constable, who fails to give the notices necessary to be served in cases of contested elections, within the time and in the mode prescribed, if practicable for him to do so, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars.

4687 (4180) (4281). **Failure of sheriff to notify judge of probate and clerk of special election.**—Any sheriff, who fails to notify the judge of probate and clerk of the circuit court that any special election is ordered by the governor, as required by law, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars.

4688 (4181) (4282). **Failure of sheriff to be present and keep order on election day.**—Any sheriff or deputy, who willfully or corruptly fails to perform any duty imposed by section 1633 (377) of this Code, must, on conviction, be fined not less than one thousand,

nor more than five thousand dollars, and be imprisoned in the penitentiary for not less than two, nor more than five years, at the discretion of the jury; and, upon conviction, the office of such sheriff is thereby vacated.

4689 (4182) (4283). **Failure to deliver votes and poll-list to county returning-officer.**—Any returning-officer of the precinct, who fails to deliver the statement of votes and the poll-list to the returning-officer of the county, within the time required by law, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars, and must also be imprisoned in the county jail for not more than six months.

4690 (4183) (4284). **Failure of officers to perform duty under election law.**—If any inspector, clerk, or other officer, on whom any duty is imposed by the election laws, willfully neglects to perform such duty, or is guilty of any corrupt conduct in the execution of the same, and no other punishment is provided for such neglect or conduct, he must, on conviction, be fined not less than one hundred, nor more than one thousand dollars; but no person shall be deemed an inspector, clerk, or officer, within the meaning of this section, until he first shall have taken an oath well and truly to discharge the duties of such office, to the best of his ability, or until he shall have performed some of the duties pertaining to such office. The failure or refusal of any person to accept office, or his failure or refusal to discharge and perform the duties of such office at any time after his appointment thereto, and prior to his taking the oath of such office, and before he shall have discharged and performed any of the duties thereof, shall not, in either event, be deemed a violation of this section.

4691 (4184) (4290). **Special charge to grand jury as to violations of election laws.**—It is the duty of the judge of the circuit, city, or criminal court to specially charge the grand jury and direct them to especially inquire into all illegal voting, and also into any and all illegal acts committed by inspectors, returning-officers, or other officers of election.

4692 (4185) (4289). **Illegal voting or attempting to vote.**—Any person, who votes more than once at any election held in this state, or deposits more than one ballot for the same office, as his vote at such election, or knowingly attempts to vote when he is not entitled to do so, or is guilty of any kind of illegal or fraudulent voting, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than five years, at the discretion of the jury. (Form 91.)

Word "election" means act of casting and receiving ballots; the day and time of voting.—Harris v. Tucker, 54 Ala. 205. Elective franchise; nature of. Washington's case, 75 Ala. 582. Disfranchisement by conviction of petit larceny.—Anderson's case, 72 Ala. 187; Washington's case, 75 Ala. 582. Section 3, article eight of constitution construed; not an ex post facto law, or bill of attainder.—Ib. 582. Domicil, once acquired, not lost until new one actually gained, facto et animo; mere intention to change, without actual removal with intention of remaining, does not cause loss of domicil.—Hallett's case, 8 Ala. 161. Must be knowledge on part of person voting, of facts which disqualify him. Gordon's case, 52 Ala. 308; Carter's case, 55 Ala. 181. But if one votes recklessly,

or carelessly, when the facts are doubtful, his ignorance no excuse; and jury will determine whether he acted honestly or recklessly.—Gordon's case, 52 Ala. 308. Sufficiency of indictment.—Wilson's case, 52 Ala. 299; Gordon's case, Ib. 308; Carter's case, 55 Ala. 181. Poll-list best evidence of who voted. Wilson's case, 52 Ala. 299; Hunter's case, 55 Ala. 767. But, unless certified by inspector, is not competent without proof of correctness.—Ib. 767. Applies to elections under local prohibition laws.—Gandy's case, 82 Ala. 61. No excuse that party had forgotten that he was convicted, or was advised he could vote. Gandy's case, 82 Ala. 61; s. c., 86 Ala. 20.

4693 (4186) (4291). **Voting without registration and taking oath.**—Any person voting at any county or state election, who has not registered and taken and subscribed to the registration oath, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars, or imprisoned in the county jail, or sentenced to hard labor for the county for not less than one, nor more than six months.

4694 (4187) (4292). **Bribing, or attempting to influence voter.** Any person, who, by bribery, or offering to bribe, or by any other corrupt means, attempts to influence any elector in giving his vote, or deter him from giving the same, or to disturb, or to hinder him in the free exercise of the right of suffrage, at any election, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars, and sentenced to hard labor for the county, or imprisoned in the county jail, for not less than thirty days, nor more than six months, at the discretion of the jury.

4695 (4188) (4293). **Altering or changing vote of elector.**—Any person, who fraudulently alters or changes the vote of any elector, by which such elector is prevented from voting as he intended, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars, and imprisoned in the county jail for not less than thirty days, nor more than six months.

4696 (4189) (4294). **Disturbing elector on election day.**—Any person, who, on election day, disturbs or prevents, or attempts to prevent, any elector from freely casting his ballot, must, on conviction, be fined not less than five hundred, nor more than one thousand dollars, and also sentenced to hard labor for the county, or imprisoned in the county jail, for not less than six months, nor more than one year.

4697 (4190) (283, 4285). **Becoming intoxicated about voting-place on election day.**—Any person found drunk or intoxicated at or about any polling-place during any election day, is guilty of a misdemeanor.

4698 (4191) (284, 4286). **Disposing of liquor on election day and day preceding.**—Any person, who sells or gives away any vinous, spirituous, or malt liquors during the day on which any election is held in this state, or on the day preceding, must, on conviction, be fined and imprisoned at the discretion of the court.

CHAPTER 151.

ESCAPES. 4699–4713.

4699 (3990) (4125) (3569) (28). **Voluntary escape by officer.** Any sheriff, or other officer or person, who has the legal custody of any person charged with, or convicted of an indictable offense, and who voluntarily permits or suffers such person to escape, must, on conviction, be imprisoned in the penitentiary not less than two, nor more than twenty years. (Form 90.)

A de facto officer is guilty as well as a de jure.—Pentecost's case, 107 Ala. 81; Diggs's case, 49 Ala. 311; Cary's case, 76 Ala. 78; Cook's case, 91 Ala. 54; Andrew's case, 78 Ala. 483 (overrules Kavanaugh's case, 41 Ala. 399). The appointment of deputy-sheriff need not be in writing.—Pentecost's case, 107 Ala. 81.

4700 (3991) (4603) (3905) (357). **Voluntary escape by officer of penitentiary.**—Any officer or other person employed in the penitentiary, or who has charge of a convict, who voluntarily suffers any convict imprisoned therein to escape, must, on conviction, be imprisoned in the penitentiary for a period equal to the unexpired term of such convict, but in no case less than two years.

4701 (3992). **Concealing, harboring, or aiding escaped convict.** Any person, who knowingly conceals, harbors, or in any way aids or assists any escaped convict, whether such escaped convict be under sentence to the penitentiary, or to hard labor for the county, must, on conviction, be imprisoned in the penitentiary for not less than one, nor more than five years.

4702 (3993) (4126) (3570) (29). **Negligent escape.**—Any officer or person, who has the legal custody of any person charged with, or convicted of an indictable offense, and who through negligence suffers such person to escape, must, on conviction, be fined not less than two hundred, nor more than one thousand dollars. (Form 65.)

Negligent escape.—Nall's case, 34 Ala. 262. A hirer of convicts who negligently allows escapes is guilty.—Smith's case, 76 Ala. 69. His bond as hirer of convicts is admissible against him.—Ib. See note to section 4699. Form of indictment sufficient.—Kavanaugh's case, 41 Ala. 399.

4703 (3994) (4127). **Same; by hiring convicts contrary to law.** Any officer charged with the duty of hiring convicts, who knowingly hires a convict to any person related to such convict by consanguinity or affinity within the fifth degree, or hostile to such convict, or of inhumane disposition, must, on conviction, be fined not less than two hundred, nor more than one thousand dollars.

4704 (3995). **Same; by hirer permitting convict to go at large, or insufficiently guarded.**—Any hirer of state or county convicts, who suffers or permits any convict under his control to go at large at any time during the term for which such convict was sentenced, or who fails to keep such convict safely confined, or attended by a sufficient guard, must, on conviction, be fined not less than two hundred, nor more than one thousand dollars.

4705 (3996) (4133) (3576) (35). **Escape of convict from jail or hard labor.**—Any convict, sentenced to imprisonment in the county jail, or to hard labor for the county, who escapes from such confinement, or departs or runs away from such labor before the expiration of the time for which he was sentenced, must, on conviction, be sentenced to the same punishment for not more than six months.

4706 (3997) (4498, 4502) (3798, 3802) (252, 254). **Escape of prisoner on removal from jail, or from one county to another.**—Any sheriff, jailer, guard, or other person, who, having charge of any prisoner while being removed from any jail on fire, or endangered by the burning of any other building, or on account of his life or health being seriously endangered by longer confinement therein, or while being removed from the jail of one county to that of another, negligently or voluntarily suffers such prisoner to escape, is guilty of an escape, as if such person had escaped from jail, and, on conviction, must be punished accordingly.

4707 (3998) (4600) (3902) (354). **Escapes and attempts to escape from penitentiary, hirer, or guard.**—Any convict, who escapes, or attempts to escape, from the penitentiary, or from any person to whom he may be hired, or from any person or guard having him in charge under authority of law, either within or outside the walls of the penitentiary, before the expiration of the term for which he was sentenced, must, on conviction, be imprisoned for an additional term of not more than one year.

4708 (3999) (4604) (3906) (358). **Escapes by United States prisoners from penitentiary.**—If any convict, committed by any court of the United States, escapes, or attempts to escape, out of the penitentiary, he is subject, on conviction, to the same punishment as if he had been committed by virtue of a conviction under the laws of this state; and the officer having charge of such convict is liable to the same penalties and punishment for any neglect or violation of duty in respect to the custody of such convict, as if he had been committed under a conviction, and sentenced under the laws of this state.

4709 (4000) (4570) (3872) (324). **Escapes or attempts to escape by convict while being conveyed to penitentiary.**—All statutory provisions in regard to escapes and attempts to escape from the penitentiary by convicts are applicable to escapes and attempts to escape by them while being conveyed to the penitentiary.

4710 (4001). **Escapes not otherwise provided for.**—Any prisoner, who escapes from lawful custody, or any officer, or other person, who aids in such escape, if there is no other punishment prescribed by law, must, on conviction, be fined not more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

Floyd's case, 79 Ala. 39.

4711 (4002) (4130, 4602) (3573, 3904) (32, 356). **Aiding convicts to escape from place of confinement; rescue.**—Any person, who conveys into the county jail, or into the penitentiary, or into any

convict-prison, or into any other lawful place of confinement, any disguise, weapon, tool, instrument, or other thing useful to aid any prisoner to escape therefrom, with the intent to facilitate the escape of any prisoner lawfully confined therein under a charge or conviction of felony, or who, by any other act, or in any other way, aids or assists such prisoner to escape, whether such escape be attempted or effected or not, or who rescues, or attempts to rescue, any such prisoner therefrom, or from the lawful custody of any officer or person, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than ten years.

Two persons aiding each other, by trying to burn a hole and escape, each guilty in assisting the other.—Luke's case 49 Ala. 30. This section creates a new and different offense from common-law offense of aiding felon to escape; section construed.—Wilson's case, 61 Ala. 151. What the indictment must allege.—Kyle's case, 10 Ala. 236; Ramsey's case, 43 Ala. 404; Wilson's case, 61 Ala. 151; Tramell's case, 111 Ala. 77; Walker's case, 91 Ala. 32; Hurst's case, 79 Ala. 55. Indictment best evidence of cause of imprisonment.—Luke's case, 49 Ala. 30. The prisoner must be confined on a charge under the laws of the state.—Tramell's case, 111 Ala. 77. A conviction for introducing a file into the jail to facilitate escape of prisoner charged with a misdemeanor is a bar to prosecution for same act to facilitate escape of felon.—Hurst's case, 86 Ala. 604. A prisoner in jail is not the accomplice of the party who tries to facilitate his escape.—Ash's case, 81 Ala. 76. Offense cannot be accomplished against prisoner's known consent.—Hurst's case, 79 Ala. 55.

4712 (4003) (4131) (3574) (33). **Aiding other prisoner to escape.**—Any person, who, by any of the means specified in the last preceding section, or by any other act, or in any other manner whatsoever, intentionally assists, or attempts to assist, any prisoner to escape from any county jail, or other lawful place of confinement, in which he is lawfully confined under a charge or conviction of misdemeanor, whether such escape be attempted or effected or not, or who rescues, or attempts to rescue, any such prisoner therefrom, or from the lawful custody of any officer or person, must, on conviction, be fined not more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

Hurst's case, 86 Ala. 604. See citations to preceding section.

4713 (4004) (4132) (3575) (34). **Aiding prisoner to escape from custody of officer.**—Any person, who does any act with intent to assist any prisoner in escaping, or attempting to escape, from the custody of any officer or person having the lawful charge of him, upon any criminal charge or conviction, must, on conviction, be punished as if he had assisted such prisoner to escape, or attempt to escape, from the county jail.

CHAPTER 152.

FINES AND FORFEITURES. 4714–4718.

4714 (4894) (4458) (3763) (216). **Fines to go to county, and judgment accordingly.**—All fines go to the county in which the indictment was found, or the prosecution commenced, unless otherwise expressly provided; and judgment therefor must be entered in favor of the state, for the use of the particular county.

Judgment for fines must be in name of state, for use of the county.—Warfield's case, 34 Ala. 261. Proceeds of hire of county convicts belong to the fine and forfeiture fund.—State v. Coleman, 73 Ala. 550.

4715 (4895) (4461) (4438). **Surplus of fund to pay officers.** Whenever there shall be a surplus of the fund arising from fines and forfeitures in the county treasury of any county, over and above the sum required to pay the registered claims of state witnesses, the county treasurer of such county must pay the fees of the officers of court arising from criminal cases in which the defendant is not convicted and the costs are not imposed on the prosecutor, or in which defendants have been convicted, and have been proved insolvent by the return of executions "no property found," or in cases in which the state enters a nolle prosequi, or where the indictment has been withdrawn and filed, or the prosecution abated by the death of the defendant.

Statute construed.—Herr v. Seymour, 76 Ala. 270. Fees of justices not payable out of fine and forfeiture fund, as fees of officers of court are in certain cases.—McPherson v. Boykin, 76 Ala. 602. Claims of witnesses can only be authenticated by clerk's certificate, not by foreman of grand jury.—Alston v. Yerby, 108 Ala. 480. As to priority of payments.—Herr v. Seymour, 76 Ala. 270; Stone v. Ames, 91 Ala. 644. When mandamus will lie against county treasurer to compel payment.—Sessions v. Boykin, 78 Ala. 328. When clerk's fees are claims against the fund.—Bilbro v. Drakeford, 78 Ala. 318. Fees for defendant's witnesses.—Hill's case, 78 Ala. 1. When costs on forfeited recognizance claim against county.—Parker's case, 83 Ala. 269. Claims against fund once lost may be revived by legislature.—Brown v. Parris, 93 Ala. 314. Legislature may change disposition, as rights do not become vested thereto so as to prevent.—Harold v. Herrington, 95 Ala. 395.

4716 (4896) (4462) (4439). **Same; officer's statement under oath; when to refund.**—In cases specified in the preceding section, the officers of court must make a statement under oath of the amount of such fees due them respectively, setting out the style of each case and the term at which judgment was rendered; and if at any time such costs so enumerated, or any part thereof, shall be paid to such officers of court by the defendants, under execution or otherwise, they must refund the same to the county treasurer, who must place the amount to the credit of the fine and forfeiture fund of the county.

4717 (4897) (4463). **Same; when indictment withdrawn, afterwards reinstated, and defendant convicted.**—When an indictment has been withdrawn and afterwards reinstated, and the defendant convicted, the fees paid under section 4715 (4895) shall be taxed

against such defendant as a part of the costs; and, upon the collection thereof, shall be paid into the fine and forfeiture fund.

4718 (4898) (4464) (4440). **Penalty for failure to make statement and refund fees afterwards collected.**—Any officer of the court, failing or refusing to comply with the requirements of the two preceding sections, must pay fourfold the amount so withheld, to be recovered by motion of the county treasurer in the circuit court of the proper county, on three days' notice to the defendant.

CHAPTER 153.

FORGERY AND COUNTERFEITING. 4719–4728.

4719 (3851) (4332, 4333) (3635, 3636) (93, 94). **Forgery in first degree.**—Any person, who, with intent to injure or defraud any person, corporation, state, or government, alters, forges, or counterfeits any bill, note, draft, check, certificate, or other evidence of debt, issued by any incorporated bank or banking company of this or any other state, or by authority of any law of the United States, or private bank, or by any officer authorized to issue the same, or drawn on any incorporated bank or banking company, or on the treasurer of this state; or who, with such intent, utters and publishes as true any falsely altered, forged, or counterfeited bill, note, draft, check, certificate, or other evidence of debt, so issued or drawn, knowing the same to be altered, forged, or counterfeited, is guilty of forgery in the first degree.

Forgery at common law is the false making or materially altering, with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy, or the foundation of a legal liability.—Dixon's case, 81 Ala. 61; Rembert's case, 53 Ala. 467; Hobbs's case, 75 Ala. 1. What need not be alleged in forgery of bank-bill.—Bostick's case, 34 Ala. 266. Expert opinion of genuine and counterfeit bank-bills.—Johnson's case, 35 Ala. 370.

4720 (3852) (4340) (3702) (156). **Forgery in second degree; of will, deed, note, bond, bill, order, etc.**—Any person, who, with intent to injure or defraud, falsely makes, alters, forges, counterfeits, or totally obliterates any will of real or personal property, or any deed, conveyance, or other instrument, being or purporting to be the act of another, by which any right or interest in property is, or purports to be transferred, conveyed, or in any way changed or affected; or any bond, bill-single, bill of exchange, promissory note, or any indorsement thereof, the forgery of which does not constitute forgery in the first degree; or any cotton receipt, or receipt for the payment of money, or any instrument or writing, being or purporting to be the act of another; or any entry in any book account, by which any pecuniary demand or obligation is or purports to be created, increased, discharged, or diminished; or who, with such intent, utters and publishes as true any falsely made, altered, forged, or counterfeited instrument, writing, indorsement, or entry, specified or in-

cluded in this section, is guilty of forgery in the second degree. (Form 50.)

What instrument subject of forgery under this section.—Jones's case, 50 Ala. 161; Horton's case, 53 Ala. 489; Anderson's case, 65 Ala. 553; Allen's case, 74 Ala. 557; Hobbs's case, 75 Ala. 1; Butler's case, 22 Ala. 43; Givens's case, 5 Ala. 747; Thompson's case, 49 Ala. 19; Rembert's case, 53 Ala. 467; Gooden's case, 55 Ala. 178; Williams's case, 61 Ala. 33; Baysinger's case, 77 Ala. 63; Gardner's case, 96 Ala. 12; Lampkin's case, 105 Ala. 1. Writing void on its face is not subject of forgery.—Hobbs's case, 75 Ala. 1; McGuire's case, 37 Ala. 161; Rembert's case, 53 Ala. 467. But otherwise, if validity can be imparted to it by extrinsic facts alleged.—Rembert's case, 53 Ala. 467; Baysinger's case, 77 Ala. 63; Lampkin's case, 105 Ala. 1; Williams's case, 90 Ala. 649; Dixon's case, 81 Ala. 61. Defendant need not have written the instrument himself; sufficient if he procured another to write it.—Gooden's case, 55 Ala. 178; Elmore's case, 92 Ala. 51. May be forgery of check, though no funds in bank.—Thompson's case, 49 Ala. 16. Also of a check drawn in name of fictitious person.—Ib. Receipt purporting to be for money paid is subject of forgery.—Allen's case, 79 Ala. 34. Changing date of receipt with intent to defraud is forgery.—Ib. And order for money specifying no amount.—Wright's case, 79 Ala. 262. Forgery of waiver of landlord's lien.—Williams's case, 90 Ala. 649; Dixon's case, 81 Ala. 61. **Intent to injure or defraud** is material ingredient.—Gooden's case, 55 Ala. 178. Knowledge that document uttered had been forged need not be alleged; intent to defraud is enough.—Espalla's case, 108 Ala. 38. Filing a deed for record is utterance.—Ib. One making an instrument **in one county** is indictable for forgery **in another county** where he has an agent (though innocent) to utter or publish it as true.—Bishop's case, 30 Ala. 34; Scully's case, 39 Ala. 240. See also McGuire's case, 37 Ala. 161; Harrison's case, 36 Ala. 248. **Indictment** must aver extrinsic facts when the instrument is unintelligible or obscure.—Rembert's case, 53 Ala. 469; Hobbs's case, 75 Ala. 1; Fomby's case, 87 Ala. 36; Baysinger's case, 77 Ala. 63; Lampkin's case, 105 Ala. 1; Williams's case, 90 Ala. 649; Dixon's case 81 Ala. 61. Sufficiency of indictment in following cases.—Johnson's case, 35 Ala. 370; Horton's case, 53 Ala. 488; Rembert's case, Ib. 467; Thompson's case, 49 Ala. 16; Jones's case, 50 Ala. 161; Anderson's case, 65 Ala. 553; Allen's case, 74 Ala. 557. Sufficient, if analogous to forms prescribed by the Code in other cases.—Jones's case, 50 Ala. 161; Johnson's case, 35 Ala. 370; Thompson's case, 49 Ala. 16. **Evidence** of genuine papers and money of same kind admissible, when and for what.—Manaway's case, 44 Ala. 375; Johnson's case, 35 Ala. 370. That the defendant knowingly uttered and published a forged instrument as true, may be sufficient proof that he committed the forgery.—McGuire's case, 37 Ala. 161; Harrison's case, 36 Ala. 248; Allen's case, 74 Ala. 560. Also unexplained possession of forged instrument.—Hobbs's case, 75 Ala. 1; Allen's case, 74 Ala. 560; Johnson's case, 35 Ala. 370. Proof of handwriting by comparison not permitted.—Givens's case, 5 Ala. 747; Bishop's case, 30 Ala. 34; Williams's case, 61 Ala. 33. Forged instrument must be produced or accounted for.—Manaway's case, 44 Ala. 375. Secondary evidence when instrument mutilated, lost, or destroyed.—Thompson's case, 30 Ala. 28; Morton's case, Ib. 527. That the supposed drawer refused to pay, inadmissible as hearsay.—Horton's case, 53 Ala. 488. Agent of company defrauded competent to prove his agency.—Manaway's case, 44 Ala. 375. Court must explain ambiguity apparent in face of forged note.—Butler's case, 22 Ala. 43. Declarations of defendant at time of delivering forged document admissible as part of res gestæ. Baysinger's case, 77 Ala. 63. **Verdict** need not specify the degree.—Anderson's case, 65 Ala. 553; Wright's case, 79 Ala. 262.

4721 (3853) (4337) (3640) (98). **Same; public seal, or seal of incorporated bank.**—Any person, who, with intent to defraud, counterfeits or forges the seal of this state, or of any public office authorized by law, or of any court of record, or of any bank or banking company, or any corporation incorporated under the authority of this state, or falsely makes, forges, or counterfeits any impression purporting to be the impression of any such seal, is guilty of forgery in the second degree.

4722 (3854) (4338) (3596) (55). **Same; by forging, destroying, or falsifying records, return to process, etc.**—Any person, who, with intent to defraud, falsely alters, forges, destroys, or falsifies the record of any judgment or decree of any court of record, either

of law or equity, or of any will, conveyance, or other instrument, which is by law required or authorized to be recorded, or the return of any officer to any writ or process of any court, is guilty of forgery in the second degree.

4723 (3855) (4339) (3597) (56). **Same; by forging official certificate.**—Any person, who, with intent to defraud, counterfeits, forges, or falsely alters any certificate or indorsement, made or purporting to have been made, by any officer authorized by law to make such certificate or indorsement, of the acknowledgment by any person of any deed or other instrument by law authorized or required to be acknowledged and recorded; or any certificate, made or purporting to have been made by any court or officer authorized by law to make such certificate, of the proof of any deed, will, or other instrument, which is by law authorized or required to be recorded on proof, is guilty of forgery in the second degree.

4724 (3856) (4334) (3637) (95). **Same; by counterfeiting gold or silver coin, etc.**—Any person, who counterfeits any gold, silver, or other coin, which is at the time current by law, usage, or custom, in this state; or who has in his possession any counterfeit gold, silver, or other coin, which is at the time current in this state, knowing the same to be counterfeit, and with intent to defraud or injure by uttering the same as true, or by causing the same to be so uttered; or who utters and publishes as true such counterfeit coin, knowing the same to be counterfeit, and with intent to injure or defraud, is guilty of forgery in the second degree. (Forms 31, 32.)

Nicholson's case, 18 Ala. 529.

4725 (3857) (4335, 4336) (3638, 3639) (96, 97). **Same; by counterfeiting engraved plate of bank-note, check, etc.**—Any person, who makes or engraves, or causes or procures to be made or engraved, any plate in the form or similitude of a promissory note, bill of exchange, draft, check, certificate of deposit, or other evidence of debt, issued by any incorporated bank or banking company within this or any other state, without the authority of such bank or banking company; or who has in his custody or possession, without the authority of such bank, any impression taken from any such plate, with the intent to have the same filled up and completed for the purpose of being passed, sold, or uttered; or who makes, or causes or procures to be made, or has in his custody or possession any plate on which are engraved any words or figures which may be used for falsely uttering any evidence of debt issued by any such bank or banking company, with intent to use the same for that purpose, is guilty of forgery in the second degree; and every plate, the engraving on which resembles or conforms to such parts of the genuine instrument as are engraved, must be deemed to be in the form or similitude of the instrument imitated, within the meaning of this section.

4726 (3858) (4341) (3641) (99). **Forgery in the third degree.** Any forgery which, under the provisions of this Code, does not amount to forgery in the first or second degree, must be adjudged forgery in the third degree.

4727 (3859) (4804) (4131) (581). **Indictment for forgery of instrument destroyed or withheld.**—In an indictment for the forgery of an instrument which has been destroyed, or is withheld by the act or procurement of the defendant, if that fact is alleged in the indictment, a misdescription of the instrument is immaterial.

4728 (3860) (4342) (3642) (100). **Punishment of forgery and counterfeiting.**—Forgery in the first degree is punished by imprisonment in the penitentiary for not less than ten, nor more than twenty years; in the second degree, by imprisonment in the penitentiary for not less than two, nor more than ten years; and in the third degree, by imprisonment in the county jail, or hard labor for the county, for not more than twelve months.

CHAPTER 154.

FRAUDS.

ARTICLE 1.—FALSE PRETENSES, CHEATS, ACTS TO INJURE, AND THE LIKE. 4729–4755.
2.—FRAUDULENT CONVEYANCES, AND ILLEGAL DISPOSITION OF PROPERTY ON WHICH ANOTHER HAS A CLAIM. 4756–4762.
3.—FRAUDS AND OTHER OFFENSES CONCERNING COTTON. 4763–4773.
4.—FALSELY PERSONATING ANOTHER IN ANY LEGAL PROCEEDING. 4774.
5.—PROSECUTING SUIT WITHOUT AUTHORITY. 4775.
6.—DEPRECIATING STOCK OR BONDS OF CORPORATION WITH INTENT TO BUY. 4776.

ARTICLE 1.

FALSE PRETENSES, CHEATS, ACTS TO INJURE, AND THE LIKE.

4729 (3811) (4370) (3714) (168). **Obtaining property by false pretenses.**—Any person, who, by any false pretense or token, and with the intent to injure or defraud, obtains from another any money, or other personal property, must, on conviction, be punished as if he had stolen it. (Form 48.)

False pretense must be of an existing or past fact; mere promise, though false, not sufficient.—Colly's case, 55 Ala. 85. Must be of material fact, calculated to deceive and defraud, and not absurd or irrational; yet, if party is imposed upon, his want of prudence no defense.—Woodbury's case, 69 Ala. 242; Beasley's case, 59 Ala. 20. Every pretense made need not be false.—Ib. And the false pretense need not be the sole, but must be the controlling inducement to part with the property.—Woodbury's case, 69 Ala. 242. And not necessary that the money obtained should be paid directly to defendant, but may be paid to another at his request.—Sandy's case, 60 Ala. 58. The same false pretense, repeated on different days, is but one transaction, and no ground to require prosecutor to elect.—Beasley's case, 59 Ala. 20. The word "injure" means what is implied in the word "defraud."—Carlisle's case, 76 Ala. 75. Goods may be obtained from bailee.—Mack's case, 63 Ala. 138. **Indictment** in the Code form, sufficient.—Sandy's case, 60 Ala. 58; O'Connor's case, 30 Ala. 9. Allegation that "he had one small black mule," means that he had the mule as owner.—Franklin's case, 52 Ala. 414. Must aver an intent to injure or defraud.—Mack's case, 63 Ala. 138. May allege in different counts that pre-

tense was made to different persons.—Oliver's case, 37 Ala. 134. Need not allege all the pretense made.—Beasley's case, 59 Ala. 20. The description "sixty-five dollars in money," is sufficient; also, of a certain instrument as "a deed of trust."—Oliver's case, 37 Ala. 134. An indictment that defendant falsely pretended there was no incumbrance on property when delivered, is not equivalent to averment of claim of right of ownership.—Jenkins's case, 97 Ala. 67. **Evidence** as to the pretense alleged, what a material variance.—O'Connor's case, 30 Ala. 9. Allegation that pretense was to H. B. Clark and proof to Hiram B. Clark, if same person, is immaterial variance.—Franklin's case, 52 Ala. 415. Not necessary to prove all pretenses alleged.—Beasley's case, 59 Ala. 20. Evidence showing use of goods by defendant, admissible to prove intent.—Mack's case, 63 Ala. 138. Sufficiency of proof of intent to injure or defraud.—Ib.; Carlisle's case, 76 Ala. 75; O'Connor's case, 30 Ala. 9; Johnson's case, 29 Ala. 62. On charge of false pretense that there was no incumbrance on property, it is not available to defendant that a mortgage was recorded, and party was therefore chargeable with notice of falsity.—Jenkins's case, 97 Ala. 67. A conviction may be had on proof that accused falsely represented himself to be a lawyer and agent of a company to lend money on farmlands, and thereby obtained $35.00 as fee to examine title to land.—Bobbitt's case, 87 Ala. 91. And for fraudulently attempting to obtain money from railroad company for failure to deliver baggage which had been already delivered. White's case, 86 Ala. 69. Failure to perform services for surety will not support conviction.—McQueen's case, 89 Ala. 91.

4730 (3812). **Same; under contract for performance of act or service.**—Any person, who, with intent to injure or defraud his employer, enters into a contract in writing for the performance of any act or service, and thereby obtains money or other personal property from such employer, and, with like intent, and without just cause, and without refunding such money, or paying for such property, refuses to perform such act or service, must, on conviction, be punished as if he had stolen it.

Indictment must allege name of employer, and aver the money was obtained from him and not refunded.—Dorsey's case, 111 Ala. 40. A fraudulent intent is a necessary element of the offense.—Ib. It is necessary that the accused should receive the money at or after time contract is executed.—Ib. The venue is the county where the money was obtained, or work was to be performed.—Ib. Indictment must aver and proof must show that the property was obtained by reason of accused having entered into contract to perform service.—Copeland's case, 97 Ala. 30; Tennyson's case, 97 Ala. 78. Indictment is bad which avers defendant "failed or refused to perform service."—Ib. Where indictment alleges contract made with A., and proof shows one made with A. and B., jointly, there is a fatal variance.—Ib. An indictment is bad which fails to aver that defendant bound himself to perform services by a contract.—Tennyson's case, 97 Ala. 78. Issue of warrant for obtaining money under false pretense, does not stop running of statute of limitations for offense under this section.—Jackson's case, 106 Ala. 136. The elements of the offense are (1) a contract in writing, (2) an intent to injure or defraud, (3) that property was obtained by reason of contract, with intent to defraud, and (4) refusal to perform with like intent.—Riley's case, 94 Ala. 82. A mere breach of the contract is not a crime.—Ib.

4731 (3813) (4374) (3715) (169). **Obtaining signature by false pretenses.**—Any person, who, by any false pretense or token, and with the intent to injure or defraud, obtains from another his signature to any written instrument, the false making of which is forgery, must, on conviction, be punished as if he had forged the instrument. (Form 49.)

The indictment should set out the instrument alleged to be forged.—Lanford's case, 45 Ala. 26. This offense is committed in obtaining an unattested signature to a bill of sale by false pretense.—Barnett's case, 89 Ala. 165; Bickley v. Keenan, 60 Ala. 293.

4732 (3814) (4376) (3716) (170). **Obtaining property by false personation.**—Any person, who, by falsely personating another, and with the intent to injure or defraud, obtains or receives any prop-

erty intended to be delivered to the individual personated, must, on conviction, be punished as if he had stolen it. (Form 47.)

4733 (3815) (4371). **Obtaining building-material by false pretenses.** — Any original contractor, or subcontractor, who, having contracted to do or perform any work or labor upon, or to furnish any material, fixtures, engine, boiler, or machinery for any building or improvement upon land, or for repairing the same, purchases materials from any person on credit, and, at the time of the purchase, represents that the same are to be used in a designated building or improvement, and thereafter, without first giving to such person due notice of his intention to so use the same, and, with intent to defraud, uses such material for any other purpose; or any such original contractor, who, when required, makes to the owner or proprietor of any land upon which such building or improvement is situated, a false and fraudulent list of material-men, laborers and employes, who have furnished any material or thing, or have done any labor, or performed any service, or may be under any contract or engagement to furnish any material or thing, or to do any labor, or perform any service for such contractor, or for or on such building or improvement, must, on conviction, be fined not less than fifty dollars.

4734 (3816) (4372). **Same; by false representation of contract with owner of building.**—Any person, who, with intent to injure or defraud, obtains any material for any building or other improvement, or procures any labor to be done on such building or improvement upon any false representation of or touching any contract or agreement with the owner or proprietor thereof, or of any lot or parcel of land, whereby sufficient money would be obtained to pay for such material or labor, and afterwards refuses to pay therefor, and such material or labor is lost by reason of such representation, must, on conviction, be punished as if he had stolen the same.

4735 (3817) (4373). **Fraudulently obtaining money or goods on credit, or bringing into state money or goods so obtained.**—Any person, who, by false representation of his pecuniary condition, or under the false color and pretense of carrying on business, and dealing in the ordinary course of trade, obtains on credit from any person money, goods, or chattels, with the intent to defraud, or brings, or causes to be brought, into this state any money, goods, or chattels so obtained in any other state, must, on conviction, be punished as if he had stolen the same; and any person violating the provisions of this section may be indicted and tried in the county in which he resides, or in any county into which he brings, or causes to be brought, any of such money, goods, or chattels.

4736 (3818). **Bringing into state property obtained elsewhere by false pretense.**—Any person, who brings or causes to be brought into this state any money or other personal property obtained from another by any false pretense, with intent to defraud, must, on conviction, be punished as if he had stolen the same.

4737 (3819) (4375.) **Keeping false books or accounts by officers**

or agents of corporations.—Any officer, agent, or servant of any private or municipal corporation, who keeps false books or accounts, or makes false entries therein, with the intent to deceive, injure, or defraud such corporation, or the officers or agents thereof, or, if a private corporation, the stockholders therein, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars, and may also be sentenced to hard labor for the county for not more than two years, one or both, at the discretion of the jury.*

4738 (3820). **Issuing false receipts for merchandise, produce, or article of value.**—Any warehouseman, or agent or employe of any warehouseman, or any person engaged in the storage or safe-keeping of goods, wares, merchandise, lime, or lumber, or cotton, grain, hay, or other produce, or any article of value, or any agent or employe of such person, or any officer or agent of any corporation engaged in such business, who, with an intent to injure or defraud, issues any false receipt for any goods, wares, merchandise, lime, or lumber, cotton, grain, hay, or other produce, or any article of value, must, on conviction, be fined not more than two thousand dollars, and sentenced to hard labor for the county for not more than two years, one or both, at the discretion of the jury.

4739 (3821). **Issuing false receipt or delivering goods without surrender of receipt.**—Any warehouseman, wharfinger, agent of a vessel or railroad, or other person, who violates any of the provisions of sections 4219 (1175), 4221 (1177), 4222 (1178), and 4223 (1179) of this Code, must, on conviction, be fined not more than one thousand dollars, or imprisoned in the penitentiary for not more than five years.

4740 (3822) (2082) (1818) (1512). **Fraud by partner in limited partnership.**—A partner in a limited partnership, who commits a fraud in the affairs of the partnership, is guilty of a misdemeanor.

4741 (3823). **Taking rebate or gratuity by state officer, or person employed by state government.**—Any officer, agent, or person, who may be empowered or authorized to purchase for the state, or any department of the state government, any property or thing of value, and who asks for, bargains for, demands, agrees to take, or receives, or takes from the seller of such property, directly or indirectly, any rebate, return compensation, discount, or drawback, in money or anything of value, must, on conviction, be punished as if he had stolen it.

4742 (3824). **Same; by officer, agent, or servant of state institution.**—Any officer, agent, or servant of the University of Alabama, the Agricultural and Mechanical College, the Alabama Bryce Insane Hospital, the Alabama Institute for the Deaf, the Alabama Academy for the Blind, or of any other corporation to which is appropriated any of the public funds of the state, who shall be authorized to buy any property of any kind for any of such corporations, and who asks for, bargains for, demands, takes, or receives, directly or indi-

*As amended by joint committee.

rectly, from the seller of such property, any rebate, discount, drawback, return commission, gift, or gratuity, must, on conviction, be punished as if he had stolen it.

4743 (3825). **Same; by officer, agent, employe, or contractor of county, city, or town.**—Any officer, agent, or person of any county, city, or town, who may be authorized or employed to buy for such county, city, or town, or any department or office thereof, or who may be authorized, empowered, or employed to contract for, or let out any work, contract, or employment, and who asks for, bargains for, demands, or who takes or receives, directly or indirectly, from the seller of such property, or the contractor for such work, or the person who may be employed, any rebate, discount, drawback, return commission, gift, or gratuity, or a part or percentage of the profits of such contract or employment, must, on conviction, be punished as if he had stolen it.

4744 (3826). **Same; by officer, agent, or servant of railroad, manufacturing, or mining corporation.**—Any officer, agent, or servant of any railroad, manufacturing, or mining corporation, who is authorized or employed to buy any property for such corporation, and who demands, asks for, bargains for, agrees to take, takes, or receives, directly or indirectly, from the seller of such property, any rebate, discount, drawback, return commission, gift, or gratuity, must, on conviction, be punished as if he had stolen it.

4745 (3827). **Same; by factor, commission merchant, broker, attorney, auctioneer, or agent.**—Any factor, commission merchant, broker, attorney, auctioneer, or agent, who is employed or authorized to sell the property of another, and who demands, asks for, bargains for, agrees to take, takes, or receives, directly or indirectly, from the purchaser or any person who is employed to store, move, handle, transport, insure, repair, or do any act or service in or about the taking care of, preserving, and marketing such property, any rebate, discount, drawback, return commission, gift, or gratuity, or who charges his principal on account of any one or more of the above-enumerated services more than he actually paid therefor, or who buys any property or thing for his principal, and charges his principal more than he actually paid therefor, must, on conviction, be punished as if he had stolen it.

4746 (3828) (4350) (3701) (155). **False affidavit, etc., to defraud insurer.**—Any person, who, being the master, or an officer, or mariner of any vessel, makes, or causes to be made, or swears to any false affidavit, or protest; or, being the owner, or other person concerned in such vessel, or in any property laden on board the same, procures any such false affidavit or protest to be made, or exhibits the same, with the intent to injure, deceive, or defraud the insurer of such vessel or property, must, on conviction, be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than one year, and may also be fined not more than two thousand dollars, at the discretion of the jury.

4747 (3829) (4351) (3703) (157). **False estimate, etc., to defraud**

insurer.—Any person, who, being the owner, or part owner of any steamboat, or vessel, or of any property laden, or pretended to be laden on board thereof, or being concerned in the lading or fitting out of such steamboat or vessel, makes out and exhibits any false or fraudulent estimate of any property, laden or pretended to be laden on board of such steamboat or vessel, with intent to injure, deceive, or defraud the insurer of such steamboat, vessel, or property, must, on conviction, be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than one year, and may also be fined not more than two thousand dollars, at the discretion of the jury.

4748 (3830) (4366) (3711) (165). **Taking, destroying, or concealing deed to injure or defraud.**—Any person, who, with intent to injure or defraud, takes or destroys any will, deed, or conveyance of real or personal property, belonging to another, or receives, conceals, or aids in concealing such deed or conveyance, knowing it to have been taken with the intention to injure or defraud, must, on conviction, be punished as if he were guilty of grand larceny.

4749 (3831) (4404) (3732) (185). **Marking, or altering or defacing brands of domestic animals with intent to defraud.**—Any person, who, with intent to defraud, marks or brands any unmarked horse, mule, cow, hog, sheep, goat, or other domestic animal, the property of another, or alters or defaces the mark or brand of such animal, must, on conviction, be punished as if he had stolen it. (Form 5.)

The offense may be joined in separate counts with larceny of the same property.—Barnes's case, 103 Ala. 44; Howard's case, 108 Ala. 571. That the defendant honestly believed the property marked was his own property is a defense.—Ib. There cannot be two convictions on one trial.—Howard's case, 108 Ala. 571.

Feb. 10, 1887, p. 125.

4750. Obtaining false and fraudulent registration of animal. Any person, who, by any false representation obtains from any person, club, association, society or company who edits, keeps, or publishes any stud-book, herd-register or record of the breeding of horses, cattle, sheep, swine, or goats, registration of any animal in such stud-book, herd-register or record, must, on conviction, be fined not less than fifty dollars nor more than five hundred dollars; and, upon any subsequent conviction for such offense, must be sentenced to hard labor for the county for not more than three months.

4751 (3832). **Failure of defendant to perform contract with surety confessing judgment for fine and costs.**—Any defendant, on whom a fine is imposed on conviction for a misdemeanor, who in open court signs a written contract, approved in writing by the judge of the court in which the conviction is had, whereby, in consideration of another becoming his surety on a confession of judgment for the fine and costs, agrees to do any act, or perform any service for such person, and who, after being released on such confession of judgment, fails or refuses without a good and sufficient excuse, to be determined by the jury, to do the act, or perform the service, which in such contract he promised or agreed to do or per-

form, must, on conviction, be fined not less than the amount of the damages which the party contracting with him has suffered by such failure or refusal, and not more than five hundred dollars; and the jury shall assess the amount of such damages; but no conviction shall be had under this section, unless it is shown on the trial that such contract was filed for record in the office of the judge of probate of the county in which the confession of judgment was had, within ten days after the date of the execution thereof.

Where contract is to perform labor as a "farm-hand," the contract cannot be so altered as to require other kind of labor.—Shepherd's case, 110 Ala. 104. Contract cannot extend beyond securing fine and costs.—Winslow's case, 97 Ala. 68; Smith's case, 82 Ala. 40; Davis's case, 95 Ala. 9. To attempt to hold convict for further or subsequently contracted liabilities, would be imprisonment for debt and unconstitutional.—Winslow's case, 97 Ala. 68. An attempt to make the convict liable as a tenant for advances is a nullity.—Ib; Davis's case, 95 Ala. 9; Smith's case, 82 Ala. 40. Commingling other debts with the fine and costs vitiates the entire contract.—Davis's case, 95 Ala. 9. If complaint alleges a contract to work on farm of Goins, a contract to work on farm of Wade is not admissible.—Wade's case, 94 Ala. 109. The indictment must aver that contract was signed in open court, and that the approval of the judge was in writing, but need not allege defendant was released on such confession. Giles's case, 89 Ala. 50; Smith's case, 81 Ala. 74. A defendant performing services under a contract for payment of fine and costs, is in law a convict and cannot be compelled to work road.—Ward's case, 88 Ala. 202. No provision for, or protection against, inefficient service.—Wynn's case, 82 Ala. 55. Not unconstitutional, fine and costs not debts.—Lee's case, 75 Ala. 29; Leach's case, 75 Ala. 36.

4752 (3833). **Damages paid to injured party out of fine imposed.** From the fine imposed under the preceding section, when collected, the damages sustained by the party contracting with such defendant must be paid to such person by the officer collecting the same.

4753 (3899) (4262). **Fraudulently obtaining duplicate warrant on state treasury.**—Any person, who fraudulently obtains from the state auditor any duplicate warrant upon the treasury of the state, must, on conviction, be punished as if he had stolen the amount specified in the warrant.

4754. Surgeon of state troops filing false claim for supplies. Feb. 18, 1895, p. 685, §3. Any surgeon of the state troops, who files with the auditor any false or fictitious claim for medicines, bandages, or surgical instruments purporting to have been purchased for such troops, must, on conviction, be punished as if he had stolen the amount of such claim.

4755. Obtaining board by fraud or misrepresentation.—Any Feb. 21, 1893, p. 1089. person, who, by fraud or misrepresentation, obtains board or lodging from the landlord, proprietor or keeper of any hotel or boarding-house, and fails or refuses to pay for the same, must, on conviction, be fined not more than five hundred dollars, and may also be sentenced to hard labor for the county for not longer than six months.

Not unconstitutional.—Ex parte King, 102 Ala. 182.

ARTICLE 2.

FRAUDULENT CONVEYANCES, AND ILLEGAL DISPOSITION OF PROPERTY ON WHICH ANOTHER HAS A CLAIM.

4756 (3834) (4352) (3704) (158). **Fraudulent conveyances.**

Any person, who, with intent to hinder, delay, or defraud creditors, makes or receives any conveyance of property, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. (Form 51.)

4757 (3835) (4353) (3705) (159). **Removing, selling, or buying property to which others have claim.**—Any person, who removes or sells any personal property for the purpose of hindering, delaying, or defrauding any person who has a claim thereto, under any written instrument, lien created by law for rent or advances, or any other lawful or valid claim, verbal or written, with a knowledge of the existence thereof; or who, with like intent, buys, receives, or conceals any such property, with knowledge of the existence of any such claim, must, on conviction, be punished as if he had stolen the same. (Form 78.)

The removal or sale must be with intent to hinder, delay or defraud the person who has the claim thereto.—Cobb's case, 100 Ala. 19. The offense of removing or sale with intent to hinder, etc., may be joined in same indictment with embezzlement.—Upshur's case, 100 Ala. 2. In such case no election required, if both offenses grow out of same transaction.—Ib. Landlord has no lien for advances furnished a day-laborer to be paid for in labor.—Powell's case, 84 Ala. 444. An equitable mortgage is such a claim as falls within the statute.—Varnum's case, 78 Ala. 28. A mortgage of an unplanted crop is within the statute.—Ib. It is a defense that property was sold to discharge a prior paramount lien.—Conner's case, 97 Ala. 83. Party buying property without knowledge of claim, and selling same without notice thereof, is not guilty, though he refuse to disclose as to the property after notice.—Thomas's case, 92 Ala. 49. Hauling cotton to the gin, if with intent to defraud, is sufficient. Money's case, 89 Ala. 110. A mortgagee who has transferred his mortgage, is guilty if he afterwards sell the property mortgaged.—Foster's case, 88 Ala. 182. If the lien has become merged into perfect title before removal there can be no conviction.—Smith's case, 84 Ala. 438 (overruling Ellerson's case, 69 Ala. 1). A mortgage on entire crop to be raised annually until debt is paid is not void, but may be explained by parol evidence.—Varnum's case, 78 Ala. 28. Indictment must aver name of party who holds claim—not sufficient to aver it is unknown.—Hill's case, 78 Ala. 1. Evidence must show knowledge.—Jones's case, 113 Ala. 95.

4758 (3836) (4354). **Selling mortgaged property.**—Any person, who sells or conveys any personal property, upon which he has given a written mortgage, lien, or deed of trust, and which is then unsatisfied, in whole or in part, without first obtaining the consent of the lawful holder thereof to such sale or conveyance, must, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months, one or both, at the discretion of the jury.

A consignment of mortgaged property by mortgagor to consignee "to do what he pleases with it" is a sale thereof.—Lippman's case, 104 Ala. 61. Intent no ingredient.—Cobb's case, 100 Ala. 19 A mortgagee who, after having transferred the mortgage, sells the mortgaged property is guilty, though not so if a partnership transfer the mortgage and one partner, without knowledge of such transfer, sell the property.—Foster's case, 88 Ala. 182. Under indictment for selling several articles of mortgaged property, a verdict of guilty as to a part is an acquittal as to the others, for which he cannot be convicted on a new trial.—Ib. A sale of calves, the offspring of mortgaged cows, is a sale of mortgaged property.—Dyer's case, 88 Ala. 225. Statute applies to equitable mortgages.—Jernigan's case, 81 Ala. 58; Varnum's case, 78 Ala. 28. A mortgage which conveys "entire crop" annually, till debt is paid, is valid as an equitable mortgage, and may be made certain by parol proof.—Varnum's

case, supra. Includes written or printed mortgages.—Johnson's case, 69 Ala. 593. The word "convey" includes "transfer" or "exchange."—Ib.

4759. Selling, removing or disposing of property subject to execution, or withholding same from assignee.—Any person, who sells, removes, or otherwise disposes of property subject to execution with the intent to hinder, delay, or defraud his creditors, or who fraudulently secretes, or withholds any such property from his assignee in any general assignment, must, on conviction, be punished by a fine of not more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. Feb. 16, 1897, p. 1089, §3

4760 (3837) (4355). **Disposing of property of tenants in common, or in which another has an interest.**—Any tenant in common, or any person in any other way interested in any personal property or outstanding crop in which any other person has an interest, who, with intent to defraud his co-tenant, or such other person, sells, gives away, or otherwise disposes of, or conceals, or removes such personal property or outstanding crop, or any part thereof; or any person who, with such intent, aids or assists in removing or concealing the same, must, on conviction, be punished as if he had stolen personal property of the value of the interest of such co-tenant, or other person having an interest therein.

Where land is cultivated under contract that crop shall be equally divided between owner of land and laborer, and the crop is divided, laborer's part put in crib and he then sells it to landlord in payment of advances, it vests title in landlord, and a subsequent removal by laborer is not violative of this statute, but is larceny.—Smith's case, 84 Ala. 438. Conviction cannot be had when lien or claim is merged into title before removal.—Ib. An outstanding crop is realty, and not protected by statute.—McCall's case, 69 Ala. 227. See also Holcombe's case, 69 Ala. 218; Ellerson's case, 69 Ala. 1.

4761 (3838) (4356). **Disposing of mare or jenny before price for foaling is paid.**—Any person, who, with a knowledge of the lien, sells, or otherwise disposes of any mare or jenny before the stipulated price for the service of any stallion or jack, for which a lien is given by law, is paid, must, on conviction, be fined not more than one hundred dollars.

4762 (3839). **Selling or exchanging "choking" horse or mule.** Any person, by himself or another, or as agent for another, who shall knowingly sell or exchange any horse or mule subject to the disease or affection known as "choking," must, on conviction, be fined not less than one hundred, nor more than five hundred dollars, and may also be sentenced to hard labor for the county for not less than three, nor more than six months; one-half of the fine shall go to the party injured. For each conviction under this section the solicitor shall be entitled to a fee of fifty dollars. Justices of the peace shall have concurrent jurisdiction with the circuit and city court of offenses arising under this section.

ARTICLE 3.

FRAUDS AND OTHER OFFENSES CONCERNING COTTON.

4763 (3840). **Mutilating or changing marks, brands, or numbers on cotton, or concealing cotton.**—Any warehouse proprietor, common carrier, officer, agent, clerk, or employe of such common carrier or person, or any other person, who, for the purpose of preventing, delaying, or hindering the rightful owner, or person having a lien thereon, from recognizing, finding and recovering his cotton (whether the same has been sold to the warehouse proprietor, or to other parties), changes or mutilates the marks, brands, or numbers on such cotton, or conceals any cotton delivered to such warehouse, common carrier, or to such other person for sale or storage, must, on conviction, be fined not less than ten, nor more than one hundred dollars.

4764 (3841) (4391) (3725) (178). **Taking cotton from bale by factor, etc., with intent to defraud, etc.**—Any factor, commission merchant, consignee, or agent, having the control of any cotton, who, with intent to defraud the owner, appropriates to his own use any cotton taken from any bale under his control, or authorizes, or knowingly permits any other person to take from any such bale any part thereof, and to retain the same to his own use, must, on conviction, be fined not less than fifty, nor more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

4765 (3842) (4392) (3726) (179). **Taking cotton from bale by person without authority.**—Any person, who knowingly and unlawfully takes from any bale of cotton any part thereof, without the authority of the owner, consignee, or agent, must, on conviction, be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

4766 (3843) (4393) (3627) (85). **Fraudulent conversion of cotton samples.**—Any person who is authorized to sample cotton, and who, with intent to defraud, converts such samples to his own use, or refuses to deliver them on demand to the owner, consignee, or agent, within thirty days after they are taken, unless they have, in the meantime, been destroyed or stolen without his agency, or taken out of his possession by legal process, must, on conviction, be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

4767 (3844) (4394) (3728) (181). **Buying cotton taken from bale without authority, etc.**—Any person, who, knowingly and with intent to defraud, buys or receives any cotton taken from the bale without the authority of the owner, consignee, or agent, must, on conviction, be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

4768 (3845) (4395) (3729) (182). **Injuring cotton-bales by cutting, etc.**—Any person, who, without the authority of the owner, consignee, or agent, willfully cuts, tears, or otherwise opens any bale of cotton, must, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

4769 (3846) (4396) (1165). **Penalty on broker purchasing cotton for failure to pay for same.**—Any cotton-broker, engaged in the business of buying cotton, either on his own account, or for others, who buys, or engages to buy from a planter or commission merchant any cotton, and fails or refuses to pay for the same at the time agreed upon, and makes way with or disposes of any cotton purchased and not paid for, is guilty of fraud and embezzlement, and, on conviction, must be imprisoned in the penitentiary not less than one, nor more than five years, at the discretion of the jury.

4770 (3847) (4397). **Unlawful sampling or removing of cotton, or illegal consideration for sampling.**—Any person violating any of the provisions of sections 1392 (1189), 1393 (1190), or 1394 (1191) of this Code, must, on conviction, be fined not less than fifty, nor more than one hundred dollars for each offense, one-half of which shall go to the informer; and in prosecutions under this section, the ownership of the cotton need not be alleged or proved.

4771 (3848) (4398) (3730) (183). **Frauds in packing cotton.** Any person, who fraudulently packs or bales any cotton, by plating or otherwise, must, on conviction, be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

It is immaterial that the foreign substance is put inside the cotton, or just inside the bagging, nor is it material that it was put there at gin or at the press.—Daniel's case, 61 Ala. 4. Constituents of offense must be charged in indictment definitely and specifically, not ambiguously, nor in slang or vulgarism.—Ib. "Sand-packing" is a term of such general use that it is not ambiguous.—Ib.

4772 (3849) (4399) (3731) (184). **Fraudulently exhibiting false samples.**—Any person, who fraudulently exhibits any false samples of any cotton, or of any other article or commodity, by means whereof any person is injured, must, on conviction, be fined not less than fifty dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. (Form 39.)

Indictment charging defendant with "fraudulently exhibiting a false sample by means whereof one 'W.' was injured," is sufficient.—Cowles's case, 50 Ala. 454. There must be proof of injury.—Ib.

4773 (3850) (4357) (1169). **Removing cotton subject to lien from state.**—Any person, who removes, or aids in removing from this state, any cotton subject to the lien given by law for the purchase-money, with intent to prevent, hinder, or delay the enforcement of such lien, must, on conviction, be imprisoned in the penitentiary for

not less than one, nor more than five years, at the discretion of the jury.

ARTICLE 4.

FALSELY PERSONATING ANOTHER IN ANY LEGAL PROCEEDING.

4774 (4009) (4147) (3586) (45). **Falsely personating another in any suit, etc.**—Any person, who falsely personates another, and, in such assumed character, becomes bail or surety for any party in any proceeding, civil or criminal, before any court, magistrate, or officer authorized to take such bail, or confesses any judgment, acknowledges the execution of any conveyance, or does any act in the course of any suit, prosecution, or proceeding, whereby the person so personated may be made liable for the payment of any debt, damages, costs, or sum of money, or his rights or interest be in any way affected, must, on conviction, be punished by imprisonment in the penitentiary for not less than two, nor more than five years.

ARTICLE 5.

PROSECUTING SUIT WITHOUT AUTHORITY.

4775 (4010) (4142) (3585) (44). **Prosecuting suit in name of another without authority.**—Any person, who, without lawful authority, prosecutes a suit in the name of another person, in any court of this state, must, on conviction, be fined not less than one hundred dollars.

ARTICLE 6.

DEPRECIATING STOCK OR BONDS OF CORPORATION WITH INTENT TO BUY.

Dec. 12, 1894, p. 65.

4776. Depreciating stock or bonds of corporation with intent to buy.—Any president, director, or managing officer of any corporation, by whatsoever name or title he may be known or called, who shall do or omit to do any act, or who shall make any declaration or statement in writing, or otherwise, with the intent to depreciate the market value of the stock or bonds of such corporation, and with the further intent to enable such president, director, or other managing officer, to buy any such stock or bonds at less than the real value thereof, must, on conviction, be fined not more than five hundred dollars, and shall be sentenced to hard labor for the county for not less than six nor more than twelve months.

CHAPTER 155.

FUGITIVES FROM JUSTICE. 4777-4791.

4777 (4746) (3976) (4348) (797). **Governor authorized to offer reward for absconding felons.**—Whenever a felony has been committed, and the perpetrator thereof is unknown, or when, being known, he absconds before being arrested, or escapes from custody, either before or after conviction, the governor is authorized, in his discretion, to offer by proclamation a reward, not exceeding four hundred dollars, for the apprehension or rearrest of such person, within five years from the date of such proclamation; and to draw his warrant on the state treasurer for the amount of such reward, when necessary to be paid.

4778 (4747) (3977) (4349) (798). **Fugitive from other state delivered up on demand of executive.**—Any person, charged in any state or territory of the United States, with treason, felony, or other crime, who shall flee from justice, and be found in this state, must, on the demand of the executive authority of the state or territory from which he fled, be delivered up by the governor of this state, to be removed to the state or territory having jurisdiction of such crime.

Morrell v. Quarles, 35 Ala. 544; Ex parte State, 73 Ala. 503; Cunningham v. Baker, 104 Ala. 170.

4779 (4748) (3978) (4350) (799). **Warrant of arrest issued by magistrate.**—A warrant for the apprehension of such person may be issued by any magistrate who is authorized to issue a warrant of arrest.

Cunningham v. Baker, 104 Ala. 170.

4780 (4749) (3979) (4351) (800). **Arrest and commitment; copy of indictment or other judicial proceedings conclusive evidence.** The proceedings for the arrest and commitment of the person charged are in all respects similar to those provided in this Code for the arrest and commitment of a person charged with a public offense, except that an exemplified copy of an indictment found, or other judicial proceedings had against him in the state or territory in which he is charged to have committed the offense, must be received as conclusive evidence before the magistrate.

4781 (4750) (3980) (4352) (801). **Commitment to await requisition of governor; bail.**—If, from the examination, it appears that the person charged has committed the crime alleged, the magistrate must, by warrant reciting the accusation, commit him to jail for a time specified in the warrant, which the magistrate deems reasonable, to enable the arrest of the fugitive to be made, under the warrant of the executive of this state on the requisition of the executive authority of the state or territory in which he committed the offense,

unless he give bail as provided in the next section, or until he is legally discharged.

4782 (4751) (3981) (4353) (802). **Bailed except in capital cases; condition and requisites of bond.**—The magistrate must, unless the offense with which the fugitive is charged is shown to be an offense punished capitally by the laws of the state in which it was committed, admit the person arrested to bail, by bond or undertaking, with sufficient sureties, and in such sum as he deems proper, for his appearance before him at a time specified in such bond or undertaking, and for his surrender, to be arrested upon the warrant of the governor of this state.

4783 (4752) (3982) (4354) (803). **When discharged on bail.**—If such person is not arrested on the warrant of the governor before the expiration of the time specified in the warrant, bond, or undertaking, he must be discharged from custody on bail.

4784 (4753) (3983) (4355) (804). **Jail fees paid in advance.**—No jailer is bound to receive any person committed under a warrant issued under the provisions of this chapter, until his jail fees for the time specified in such warrant are paid in advance.

4785 (4754) (3984) (4356) (805). **Forfeiture of bail; proceedings; indorsement of magistrate as evidence.**—If the fugitive is discharged on bail, and fails to appear or surrender himself according to his bond or undertaking, the magistrate must indorse thereon "forfeited," sign his name thereto, and return it to the clerk of the circuit court by the first day of the next term; and a conditional judgment must be rendered thereon, and proceedings had, as in case of bonds or undertakings forfeited in that court, the indorsement of the magistrate being presumptive evidence of the forfeiture.

4786 (4755) (3985) (4357) (806). **At expiration of time, discharged, bailed, or recommitted.**—At the expiration of the time specified in the warrant, the magistrate may discharge or recommit him to a further day, or may take bail for his appearance and surrender, as provided in section 4782 (4751); and on his appearance, or if he has been bailed and appear according to the terms of his bond or undertaking, the magistrate may either discharge him therefor, or may require him to enter into a new bond or undertaking, to appear and surrender himself at another day.

4787 (4756) (3986) (4358) (807). **If prosecution pending here, surrender discretionary.**—If a criminal prosecution has been instituted against such person under the laws of this state, the governor may or not, at his discretion, surrender such person on the demand of the executive of another state, before he has been tried and punished, if convicted, or discharged.

4788 (4757) (3987) (4359) (808). **Governor's warrant; directed to whom.**—A warrant from the executive may be directed to the sheriff, coroner, or any other person whom he may think fit to intrust with the execution of the same.

4789 (4758) (3988) (4360) (809). **Executed where and how.** Such warrant authorizes the officer or person to whom it is directed

to arrest the fugitive at any place within the state, and to require the aid of all sheriffs and constables, to whom the same is shown, in its execution.

4790 (4759) (3989) (4361) (810). **Authority of arresting officers, etc.**—Every such officer or person has the same authority, in arresting the fugitive, to command assistance therein, as sheriffs and other officers by law have in the execution criminal process directed to them, with the like penalties on those who refuse their assistance.

4791 (4760) (3990) (4362) (811). **Confinement in jail; when necessary.**—The officer or person executing such warrant may, when necessary, confine the prisoner arrested by him in the jail of any county through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the person having charge of him is ready to proceed on his route, such person being chargeable with the expense of keeping.

CHAPTER 156.

GAMING AND LOTTERIES. 4792-4811.

4792 (4052) (4207) (3620) (78). **Card and dice playing at public houses and other public places.**—Any person, who plays at any game with cards or dice, or any device or substitute therefor, at any tavern, inn, storehouse for selling or retailing spirituous, vinous, or malt liquors, or house or place where spirituous, vinous, or malt liquors are retailed, sold, or given away, or in any public house, highway, or in any other public place, or any outhouse where people resort, must, on conviction, be fined not less than twenty, nor more than fifty dollars. (Form 24.)

The game **backgammon** not prohibited.—Wetmore's case, 55 Ala. 198. **Raffling with dice** prohibited.—McInnis's case, 51 Ala. 23. **Throwing dice** for money or drinks, sufficient.—Jones's case, 26 Ala. 155. Engaging in a raffle, where the winner is determined by throwing dice, prohibited.—Johnson's case, 83 Ala. 65. **Playing once,** sufficient.—Cameron's case, 15 Ala. 383; Swallow's case, 20 Ala. 30. Words **"device" and "substitute"** not of same meaning.—Henderson's case, 59 Ala. 89. **Dominoes** as a substitute for cards in playing euchre.—See Harris's case, 31 Ala. 362; s. c., 33 Ala. 373. No matter what **secrecy** observed, if playing done at public house, or other place specially mentioned.—Windham's case, 26 Ala. 69. **A public place** is, in general, any place which, for the time being, is made public by the assemblage of people.—Campbell's case, 17 Ala. 369. Any place, house, or room, even a bedroom, may become a public place from the use of it, generally or at the time. Smith's case, 52 Ala. 384; Coleman's case, 20 Ala. 51; Russell's case, 72 Ala. 222; Johnson's case, 75 Ala. 7; Nickols's case, 111 Ala. 58; Thompson's case, 99 Ala. 173. Also a steamboat.—Coleman's case, 13 Ala. 602. Or an infirmary. Flake's case, 19 Ala. 551. Or a ferry-boat in the middle of a navigable river. Dickey's case, 68 Ala. 508. Or a place in the bushes in the edge of an old field. Henderson's case, 59 Ala. 89. In the following cases, the places were held not to be public on account of circumstances of privacy attaching at the time: A private house or room.—Coleman's case, 20 Ala. 51. A deep hollow in a piece of woods.—Bythwood's case, 20 Ala. 47. A physician's office.—Clarke's case, 12 492; Sherrod's case, 25 Ala. 78. A lawyer's office.—Burdine's case, 25 Ala.

60. A back room occupied by a register in chancery as a bedroom.—Roquemore's case, 19 Ala. 528. A blacksmith-shop.—Graham's case, 105 Ala. 130. The term **public place** does not include **public house,** or other place specially mentioned.—Windham's case, 26 Ala. 69; Brown's case, 27 Ala. 47; Sweeney's case, 28 Ala. 47; Huffman's case, 28 Ala. 48; Smith's case, 37 Ala. 472; Burdine's case, 25 Ala. 60; Sherrod's case, 25 Ala. 78; Roquemore's case, 19 Ala. 528; Clarke's case, 12 Ala. 492; McCauley's case, 26 Ala. 135. One game at public place is sufficient.—Nickols's case, 111 Ala. 58. **"Any other public place"** has the effect of making all places which precede the clause **"per se"** public places.—Pickens's case, 100 Ala. 127. But a contrary rule is laid down in decisions on **betting** in a public place, etc.—See Napier's case, 50 Ala. 168. **Bedroom or dwelling-house** may, from use of it, become one of the **prohibited places.**—Johnson's case, 75 Ala. 7. A bedroom in the second story of a building, the first story of which is sometimes used as a dancing-hall, is not a **public house.**—Skinner's case, 87 Ala. 105. Held to be **public house** in each of the following cases: A room in a warehouse on river-bank. Windham's case, 26 Ala. 69. Also a room belonging to a hotel or tavern, although in a lot separate and distant from the hotel.—Russell's case, 72 Ala. 222. A "lawyer's office."—McCauley's case, 26 Ala. 135. The office of a justice of the peace, or a back room thereto.—Burnett's case, 30 Ala. 19. A storehouse for selling dry-goods.—Skinner's case, 30 Ala. 524. A "barber-shop" and "rooms above."—Moore's case, Ib. 550; Cochran's case, Ib. 542. A broker's office and connected sleeping-room.—Wilson's case, 31 Ala. 371. Building where saddle and harness business carried on, and connected rooms. Bentley's case, 32 Ala. 596. A toll-bridge house, unless used exclusively as a private residence.—Arnold's case, 29 Ala. 46. **Storehouse for sale of liquors, or house or place where liquors are sold, etc.;** held to be within the statute in the following cases: Johnson's case, 19 Ala. 527; Huffman's case, 29 Ala. 40; s. c., 30 Ala. 532. But the following cases held not to be within the statute: Dale's case, 27 Ala. 31; Phillips's case, 51 Ala. 20. **Meaning of the statutory term "at" the house, etc.**—Ray's case, 50 Ala. 172. **Outhouse where people resort, etc.;** what held to be.—Swallow's case, 20 Ala. 30. What held not to be.—Cain's case, 30 Ala. 534; McDaniel's case, 35 Ala. 390. Outhouse defined.—Downey's case, 90 Ala. 644; Pickens's case, 100 Ala. 127; Downey's case, 110 Ala. 99. **Highway** means a public road, as distinguished from a private way.—Mills's case, 20 Ala. 86. A navigable river is not a highway within this statute.—Glass's case, 30 Ala. 529; Dickey's case, 68 Ala. 508. But it may become a public place.—Dickey's case, 68 Ala. 508. Playing within seventy-five yards of public road, if visible from road, forbidden.—Franklin's case, 91 Ala. 23. If the playing was in an **inn** or **tavern,** it is immaterial that the room was a bedroom.—McCalman's case, 96 Ala. 98. Meaning of word **"tavern"** generally.—Cloud's case, 6 Ala. 628. A bedroom in the third story of a hotel or boarding-house, where the occupant eats, cooks and sleeps, is within the statute.—Foster's case, 84 Ala. 451. **Indictment** need not now allege a "game was played"; Code form cures this.—Rosson's case, 92 Ala. 76; Clayborne's case, 103 Ala. 53 (Tolbert's case, 89 Ala. 29; Collins's case, 70 Ala. 19; Dreyfus's case, 83 Ala. 54, explained). Indictment charging offense of betting is not supported by proof of playing only.—Chambers's case, 77 Ala. 80.

4793 (4053) (4207) (3620) (78). **Same; exceptions; burden of proof.**—A conviction must not be had under the preceding section, if it is shown on the trial that the playing occurred at any house, room, or building attached to a public watering-place, and under the control of the owner or lessee of such watering-place, or at a house, room, or building in the use and occupancy of any social club or literary society incorporated under the laws of this state, and that in the room in which such playing occurred spirituous, vinous, or malt liquors were not kept, retailed, sold, or given away, and that nothing of value was bet on such playing.

4794 (4054) (4807) (4134) (584). **Indictment and proof of gaming.**—In an indictment for gaming under the second preceding section, it is not necessary to state the name of the game played; it is sufficient to charge that the defendant "played at a game with cards, or dice, or some device or substitute therefor," in one or more of the places enumerated in that section, or in a public place; and it is not necessary to prove on the trial what the game was called.

The statute dispenses with the necessity of alleging or proving the kind of game.—McInnis's case, 51 Ala. 23; citing Holland's case, 3 Port. 292. Design of statute was to dispense with technicalities.—Atkyns's case, 1 Ala. 180. Form in Code sufficient; not unconstitutional.—Burdine's case, 25 Ala. 60; Burnett's case, 30 Ala. 19; Harris's case, 31 Ala. 362. Alleging a game "of" cards, etc., instead of "with" cards, etc., sufficient.—Cochran's case, 30 Ala. 542. Also sufficient to allege "played at cards" instead of "at a game with cards." Coggins's case, 7 Port. 263; Holland's case, 3 Port. 292. Need not allege ownership of public house.—Atkyns's case, 1 Ala. 180. Cannot join different persons in same indictment, unless they played at same game; variance on proof of a separate game.—Lindsey's case, 48 Ala. 169. Election by prosecutor, when is, and when not required.—Smith's case, 52 Ala. 384; Elam's case, 26 Ala. 48; Cochran's case, 30 Ala. 542. Proof must show the character of the house at the time of playing.—Logan's case, 24 Ala. 182; Mitchell's case, 55 Ala. 160. See also Coleman's case, 3 Ala. 14. Defendant's want of knowledge of character of place, no excuse; it is duty of persons to see that they do not play at a prohibited place.—Johnson's case, 75 Ala. 7. Witness may testify to card-playing without giving a particular description of the game.—Johnson's case, 74 Ala. 537. When witness not an accomplice.—Smith's case, 37 Ala. 472. When defendant was seen with cards in hand with others, question for jury to say whether he was playing.—Henderson's case, 59 Ala. 89.

4795 (4055) (4208) (3621) (79). **Keeping gaming-table.**—Any person, who keeps, exhibits, or is interested or concerned in keeping or exhibiting any table for gaming, of whatsoever name, kind, or description, not regularly licensed under the laws of this state, shall be guilty of a felony, and, on conviction thereof, must be fined not less than one hundred, nor more than five hundred dollars, and shall also be imprisoned in the penitentiary for not less than six months, nor more than two years; and, on a second or any subsequent conviction, shall be imprisoned in the penitentiary for not less than two, nor more than five years. (Form 55.)

The kind of table is not confined to banking-tables, such as faro, roulette, etc., but includes tables for games of cards, such as "draw-poker," etc. Wren's case, 70 Ala. 1. **Any table,** even a plank, kept and used for gaming, although without any particular device or appliance, and though not used for any particular game, is a "table for gaming" within the statute.—Toney's case, 61 Ala. 1. The statute is swelled at the **use.**—Bibb's case, 83 Ala. 84; Bibb's case, 84 Ala. 13; Toney's case, 61 Ala. 1. **Game of "keno"** is within the statute.—Miller's case, 48 Ala. 122. What does not show a sufficient violation of the statute, as to **the use of the table.**—Owens's case, 52 Ala. 213. What constitutes the **keeping** or **"being interested or concerned** in keeping," etc. Miller's case, 48 Ala. 122; Wren's case, 70 Ala. 1; Bibb's case, 84 Ala. 13; Bibb's case, 83 Ala. 84. **Indictment** need not allege, nor need it be proved, that any money was bet at the table.—Whitworth's case, 8 Port. 434. Two or more persons may be joined, and only one convicted.—Covy's case, 4 Port. 186. **The punishment** is both fine and imprisonment—fine assessed by jury, imprisonment fixed by court.—Bibb's case, 83 Ala. 84.

4796 (4056) (4808) (4135) (585). **Indictment for, and proof of keeping or exhibiting gaming-tables, etc.**—In an indictment for keeping or exhibiting a gaming-table under the preceding section, it is sufficient to charge, in general terms, that the defendant kept, exhibited, or was interested or concerned in keeping or exhibiting, a gaming-table for gaming, without describing the table more particularly, or alleging in what manner the defendant was interested or concerned in keeping or exhibiting it; nor is it necessary to allege or prove that any money was bet at the table. (Form 55.)

Bibb's case, 83 Ala. 84; Bibb's case, 84 Ala. 13.

4797 (4057) (4209) (3622) (80). **Betting at cards, dice, etc.** Any person, who bets or hazards any money, bank-notes, or other thing of value, at any gaming-table prohibited by section 4795

(4055), or at any game prohibited by section 4792 (4052), or at a game called "keno," or at any game of hazard or skill played on any steamboat while engaged in plying any of the navigable waters of this state, must, on conviction, be fined not less than fifty, nor more than three hundred dollars. (Forms 16, 17.)

Betting defined; when a bet is complete.—Welch's case, 7 Port. 463. **Betting at keno.**—Schuster's case, 48 Ala. 199. **Prohibited places.**—See note to section 4792. **Indictment** need not specify the thing bet, nor its value; form in Code sufficient —Collins's case, 70 Ala. 19; Jacobson's case, 55 Ala. 151; Mitchell's case, Ib. 160; Johnson's case, 75 Ala. 7. But such form in Code, literally followed, is sufficient only for betting at gaming-table, or keno; other words necessary for betting at prohibited places.—Johnson's case, 75 Ala. 7. See the following cases as to sufficiency of indictment.—Napier's case, 50 Ala. 168; Ray's case, Ib. 172; Rodger's case, 26 Ala. 76; Clark's case, 19 Ala. 552. Joinder in same count of betting, and being concerned in betting under former statute.—Ward's case, 22 Ala. 16. Two or more persons may be joined.—Ib.; Swallow's case, Ib. 20. Allegation of betting at "public place" sustained by **proof** of betting "at a house where spirituous liquors were retailed."—Ray's case, 50 Ala. 172; Napier's case, Ib. 168. Whether place played at sufficiently proved to be public place, is a question for the jury.—Johnson's case, 75 Ala. 7. **It is no longer necessary for indictment to allege that a "game was played."** Rosson's case, 92 Ala. 76; Clayborne's case, 103 Ala. 53; Thompson's case, 99 Ala. 173. The decisions holding contrary were as to forms of Code of 1876.—Tolbert's case, 87 Ala. 29; Dreyfus's case, 83 Ala. 54. If a party bets at cards on Sunday at public place, he may be prosecuted for three offenses, but a conviction of one is a bar to others.—McVay's case, 100 Ala. 113. Indictment may join in one count offense of playing and of betting.—Clayborne's case, 103 Ala. 53. But if indictment alleges offense only of "betting" and the verdict is only for "playing," it is an acquittal of both.—Ib. It is competent to prove that other parties played at the game.—Thompson's case, 99 Ala. 173. Evidence as to character of house where game was played is admissible.—Tolbert's case, 87 Ala. 27. Under an indictment for betting, a conviction cannot be had for playing only.—Chambers's case, 77 Ala. 80.

4798 (4058) (4210) (3623) (81). **Betting at billiards, tenpins, etc.**—Any person, who bets or hazards any money, bank-notes, or other thing of value, except for charge for the use of the table or alley, at billiards, tenpins, or any other game, at any table or any alley regularly licensed, must, on conviction, be fined not less than fifty, nor more than one hundred dollars.

License to keep billiard-table does not authorize its use for the game of pool.—Rodger's case, 26 Ala. 76. What constitutes the offense of betting at tenpins.—Bass's case, 37 Ala. 469. What proof required under this section. Bone's case, 63 Ala. 185.

4799 (4059) (4211) (3624) (82). **Betting with minor or apprentice.**—Any person, who, being of full age, bets or hazards any money, bank-notes, or other thing of value, with a minor, or with an apprentice, or who allows any minor or apprentice to bet or hazard any thing of value at any gaming-table kept or exhibited by him, or in which he is interested or concerned, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

4800 (4060). **Betting on election in this state.**—Any person, who bets or hazards any money, bank-notes, or other thing of value, on any general or special election authorized by law to be held in this state, must, on conviction, be fined not less than twenty, nor more than five hundred dollars.

4801 (4061) (4212) (3625) (83). **Proprietors of liquor-saloons**

and other public houses permitting gaming.—Any person, who, being a licensed retailer, or the keeper, proprietor, owner, or superintendent of any tavern, inn, or other public house, or of any house where spirituous, vinous, or malt liquors are sold, retailed, or given away, or of any outhouse where people resort, or the captain or other commanding officer of any steamboat engaged in plying any of the navigable waters of this state, knowingly suffers any of the offenses prohibited by sections 4792 (4052), 4795 (4055), 4797 (4057), 4798 (4058), and 4799 (4059) to be committed in his house, or on his premises, or on his boat, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars, and imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

Retailers, etc., must be diligent, and use all proper means to prevent gaming on premises.—Wilcox's case, 50 Ala. 142; Campbell's case, 55 Ala. 89. Party indicted must have control of premises.—Perez's case, 48 Ala. 357. Agent or servant superintending may be responsible, although his principal knew of and did not prevent the gaming.—Wilcox's case, 50 Ala. 142. Lessee of two-story house, who retails below, and knows that a room of his tenant above in second story is used for gaming purposes, may be convicted, unless he affirmatively shows such a separation from the lower story as will exonerate him from liability; question for jury.—Campbell's case, 55 Ala. 89. When manager of social club indictable.—Jacobi's case, 59 Ala. 71. Mobile Bay not a river, and hence not included in the term "any of the rivers of this state." Johnson's case, 74 Ala. 537. (But the statute has been changed by substituting "waters" for "rivers.") **Indictment** against retailer must allege that he was a licensed retailer.—Kenedy's case, 1 Ala. 31. Need not allege name of person permitted to keep or exhibit gaming-table.—Clarke's case, 19 Ala. 552. When indictment defective.—Perez's case, 48 Ala. 336.

4802 (4062) (4212) (3625) (83). **Same; exceptions.**—A conviction must not be had under the preceding section for suffering to be played at any house or place therein designated any game mentioned in section 4792 (4052), if it is shown on the trial that such playing was at any house, room, or building attached to a public watering-place, and under the control of the owner or lessee of such watering-place, and that in the room in which such playing occurred spirituous, vinous, or malt liquors were not kept, retailed, sold, or given away, and that nothing of value was bet on such playing.

4803 (4063) (4213). **Permitting minors to play billiards or pool.** Any person operating or managing a billiard or pool table on which the public can play, whether for pay or not, who knowingly permits any minor to play thereon, must, on conviction, be fined not less than fifty dollars.*

Sikes's case, 67 Ala. 80.

4804 (4064) (4214) (3626) (84). **Renting room, booth, etc., to be used for gaming purposes.**—Any person, who, being the owner or proprietor of any house, room, booth, or tent, rents or leases the same to be used for gaming purposes, or for the exhibition of any gaming-table, or knowingly permits the same to be used for any such purpose, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars, and imprisoned in the county

*As amended by joint committee.

jail, or sentenced to hard labor for the county, for not more than six months.*

Poteete's case, 72 Ala. 558.

4805 (4065) (4216) (3628) (86). **Examination of witnesses before grand jury in gaming and lottery cases.**—Witnesses before the grand jury, summoned to give evidence of any violation of the laws against gaming or lotteries, may be required to answer generally as to any such offense, within their knowledge, committed within the twelve months next preceding, without being first specially interrogated as to any particular offense; but no witness must be prosecuted for any offense, as to which he testified before the grand jury, and any member of the grand jury may be a witness to prove that fact.

Bank's case, 78 Ala. 14.

4806 (4066) (4136) (3579) (38). **Refusal of witness to testify before grand jury as to gaming or lottery.**—Any person, who is summoned as a witness before the grand jury to answer as to any gaming or lottery within his knowledge, and who fails or refuses to attend and testify in obedience to such summons, without a good excuse, to be determined by the court, is guilty of a contempt, and also of a misdemeanor; and, on conviction for such misdemeanor, must be fined not less than twenty, nor more than three hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months.

Statute makes refusal offense, and prescribes punishment for the same, but not for the contempt, with which the statute has nothing to do.—Newsum's case, 78 Ala. 407. It is not necessary that witness be summoned, if he appear. Ib. See also Drake's case, 60 Ala. 62.

4807 (4067) (4217) (3629) (87). **Judicial and executive officers' authority and duty in gaming cases.**—Judges of the circuit, city and county courts, justices of the peace, sheriffs, constables, and the judicial and executive officers of any incorporated city or town, have authority, and it is their duty, on receiving information, or having good cause to believe, that any person is violating, or has violated the provisions of section 4795 (4055), to cause such person to be arrested and carried before some judicial officer having jurisdiction of the offense; and the officer before whom he is carried, if it appears from the evidence that he is guilty, must require him to give bail for his appearance at the next term of the court having jurisdiction of the offense, and, on his failure to do so, must commit him to the county jail.

As amended Feb. 16, 1891, p. 757.

4808 (4068) (4445) (3616) (74). **Carrying on or representing lottery; selling tickets in same.**—Any person, who sets up, carries on, or is concerned in setting up or carrying on any lottery or device of like kind, or any gift enterprise, or any scheme in the nature of a lottery or gift enterprise; or who sells or disposes of any lottery or gift-enterprise ticket, or ticket in any scheme in the nature of a lottery or gift enterprise; or who shall receive money or take an order

*As amended by joint committee.

for any lottery or gift-enterprise ticket, or for any ticket in any scheme in the nature of a lottery or gift enterprise; or who is interested or concerned in selling or disposing of any ticket in any lottery or gift enterprise, or scheme in the nature of a lottery or gift enterprise; or who shall act for or represent any other person in selling or disposing of any such ticket, must, on the first conviction, be fined not less than twenty-five, nor more than five hundred dollars; and on the second conviction, must be fined not less than fifty, nor more than five hundred dollars, and must also be imprisoned in the county jail, or sentenced to hard labor for the county, for not less than thirty, nor more than ninety days; and on the third, or any subsequent conviction, must be fined not less than one hundred, nor more than one thousand dollars, and must also be imprisoned in the county jail, or sentenced to hard labor for the county, for not less than six, nor more than twelve months.* (Form 58.)

Constitution prohibits the legislature from authorizing lotteries or similar schemes.—Const., Art. IV., §26; Boyd's case, 61 Ala. 177. Lottery defined. Buckalew's case, 62 Ala. 334. Game of "keno" not a lottery.—Eslava's case, 44 Ala. 406. What is a "device of like kind."—Chavannah's case, 49 Ala. 396. Selling lottery-tickets is being "concerned in carrying on" a lottery.—Salomon's case, 27 Ala. 26. Resale of lottery-ticket by one entirely disconnected with lottery, is no violation of statute; but otherwise, if connected with the lottery.—Salomon's case, 28 Ala. 83. Evidence tending to prove being "concerned in," etc.—Ib. Selling tickets in foreign lottery as proof of being concerned in such lottery; when burden on defendant to disprove charge.—Ib. Not necessary to prove that party himself sold lottery-ticket; may be through an agent.—Mark's case, 45 Ala. 38. Insufficient description of "being concerned in" lottery, in undertaking of bail.—Keipp's case, 49 Ala. 337. Indictment in Code form sufficient.—Salomon's case, 27 Ala. 261. A disc on which an arrow revolves and points to numbers at which prizes are placed, and parties pay for the privilege of whirling the arrow on terms that they receive the prize designated by the number at which the arrow shall stop, is a lottery. Reeves's case, 105 Ala. 120; Buckalew's case, 62 Ala. 334; Yellowstone Kit's case, 88 Ala. 196. It is not carrying on a lottery to distribute prizes among ticket-holders who have paid nothing for the tickets.—Yellowstone Kit's case, 88 Ala. 196. There is no law which prohibits the gratuitous distribution of one's own property by lot, nor is it **per se** morally wrong.—Ib. See also Ex parte Hawkins, 89 Ala. 103.

4809 (4069) (4446). **Grand juries have no discretion.**—Grand juries shall have no discretion as to finding indictments for violations of the preceding section, and it shall be their duty, if the evidence justifies it, to find and present indictments for every such violation. Ib. §2.

4810. Selling pools on events outside the state.—Any person who, either as principal or agent, sells any pool, ticket, chance, or other device, or makes or takes any wager, or enters into any transaction whereby money or other valuable thing may be won or lost upon any horse-race, prize-fight, drill, baseball game, or other contest, taking place outside this state; or any person who acts as agent Feb. 18, 1895, p. 923.

*An act approved February 13, 1897 (Pamph. Acts, p. 901), entitled "An act to prevent the use of wheels of fortune, chance games and rafflings, or devices of like kind," is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That any person who sets up, carries on or operates any wheel of fortune, slot machine, or any device of chance, or scheme of raffling, or any person who sells tickets or chances in such devices or scheme of raffling, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten, nor more than fifty dollars.

"SEC. 2. *Be it further enacted*, That the justices of the peace shall have jurisdiction of cases arising under the provisions of this act."

for any other person in procuring or placing outside this state for such other person any pool, ticket, chance, wager, or other device, or does anything in this state to aid any other person in entering into any transaction whereby he may win or lose money or other valuable thing upon any horse-race, prize-fight, drill, baseball game, or other contest taking place outside this state, must, upon conviction, be fined not less than twenty-five, nor more than five hundred dollars for the first offense; and upon a second conviction, shall be sentenced to imprisonment in the county jail, or to hard labor for the county, for thirty days; and upon each further conviction, shall be sentenced to sixty days' hard labor for the county.*

Feb. 16, 1891, p. 757. Feb. 18, 1895, p. 923.

4811. Jurisdiction and duty of municipal officers in pool-selling and lottery cases.—The mayor or other judicial officer of every incorporated city or town shall have concurrent jurisdiction with the circuit or city courts of every violation of sections 4808 (4068) and 4810 within the corporate limits of their respective cities and towns, and outside of such limits to the distance of five miles therefrom within their respective counties; and the police or other executive officers of such city or town have authority, on receiving information, or having good cause to believe, that any person is violating or has violated said sections within such territory, to arrest such person and carry him before the mayor or other judicial officer for trial.

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*An act approved February 5, 1897 (Pamph. Acts, p 581), entitled "An act to prohibit book-making, or pool-selling on horse-racing, and other forms of gambling," is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That if any person shall buy or sell what is commonly known as a pool, or any interest or share in any such pool, or shall make or take what is commonly known as a book, upon the running, pacing, or trotting, or what purports to be the running, pacing or trotting, either within or without this state, of any mare, horse, or gelding, or upon any horse-race, or upon what purports to be any horse-race, whether within or without this state, such person shall be deemed guilty of a misdemeanor, and must, on conviction, be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

"SEC. 2. *Be it further enacted*, That if any person shall give to or take or receive from another any money or other thing of value to be bet or hazarded, or to be used in buying any pool, or any interest in any pool, upon the event of any horse-race, either within or without this state, he shall be deemed guilty of a misdemeanor, and must, on conviction, be punished as provided in the preceding section.

"SEC. 3. *Be it further enacted*, That if any person or corporation shall carry on or conduct the practices commonly known as book-making or pool-selling, or either of them, or shall keep a place to which persons shall resort for engaging in such practices, or in either of them, or for betting, upon the event of any horse-race, or other race or contest, either within or without this state, such person or corporation shall be deemed guilty of a misdemeanor, and must, on conviction, be punished by a fine of not less than one hundred, nor more than five hundred dollars, and by imprisonment in the county jail for not less than one month nor more than one year.

"SEC. 4. *Be it further enacted*, That if any corporation of this state shall be convicted of a violation of any of the provisions of this act, such conviction shall have the effect to dissolve such corporation, and to render forfeit and void its corporate franchise and powers, without any other or further proceedings to that end.

"SEC. 5. *Be it further enacted*, That all laws and parts of laws, general or special, inconsistent with this act, be, and the same are hereby repealed, and this act shall take effect immediately."

CHAPTER 157.

HABEAS CORPUS. 4812-4853.

4812 (4761) (4936) (4260) (709). **Who entitled to writ; when the proper remedy.**—Any person, who is imprisoned or restrained of his liberty in this state, on any criminal charge or accusation, or under any other pretense whatever (except persons committed or detained by virtue of process issued by a court of the United States, or by a judge thereof, in cases of which such courts have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of suits in such courts), may prosecute a writ of habeas corpus, according to the provisions of this chapter, to inquire into the cause of such imprisonment or restraint.

As to jurisdiction of state courts to discharge enrolled conscript from custody of Confederate States officer.—Ex parte Hill, 38 Ala. 458. Statutes on habeas corpus do not take away common-law right to the writ.—Kirby's case, 62 Ala. 51. Proper remedy when one sentenced to hard labor is confined in jail instead of being put to hard labor.—Kirby's case, 62 Ala. 51; Ex parte Pearson, 59 Ala. 654; Stewart's case, 98 Ala. 66; Crew's case, 78 Ala. 457; Goucher's case, 103 Ala. 305. Also, where justice of the peace imposes void sentence.—Ex parte McKivett, 55 Ala. 236. Also, where unauthorized sentence imposed for violating municipal ordinance.—Ex parte Moore, 62 Ala. 471. Also where sentence is in excess of jurisdiction; but not where the sentence is irregular merely, and not void.—Ex parte Brown, 63 Ala. 187; Ex parte Simmons, 62 Ala. 416; Ex parte State, 71 Ala. 371. Not appropriate remedy in imprisonment for contempt.—Ex parte Hardy, 68 Ala. 303. Scope of inquiry where party committed by chancellor for contempt.—Ib. Not the remedy to test putative father's right to custody of a bastard child.—Matthews v. Hobbs, 51 Ala. 210. When lies by a father for the custody of his child.—Ex parte Murphy, 75 Ala. 409. Although the writ is matter of right, it is not granted unless showing of party entitles him to relief.—Ex parte Campbell, 20 Ala. 89. The proper remedy to get case before supreme court when bail refused below.—Ex parte Croom, 19 Ala. 561; Jones's case, 94 Ala. 33; Richardson's case, 96 Ala. 110. See note to section 4355. Not remedy in case of unauthorized discharge of jury.—Ex parte Champion, 52 Ala. 311. Nor for disqualification of presiding judge.—Ex parte State, 76 Ala. 482. Nor for failure of jury to ascertain degree of murder. Ex parte Dover, 75 Ala. 40. When defendant not under indictment, may be discharged.—Ex parte Champion, 52 Ala. 311. Defendant committed in bastardy proceedings is entitled to writ.—Ex parte Charleston, 107 Ala. 688. Mandamus will lie to compel hearing of writ, though not to direct decision or discharge.—Jones's case, 94 Ala. 33. Whether writ will be awarded or not is a judicial question, but whether it will be heard or not is a ministerial one. Ib.; Charleston's case, 107 Ala. 688. Burden and sufficiency of proof on hearing of right to bail on habeas corpus.—Ex parte Hammock, 78 Ala. 414; Ex parte Rhear, 77 Ala. 92; West's case, 100 Ala. 65 (Ex parte Champion, 52 Ala. 311, criticised). Where held under void process.—Long's case, 87 Ala. 46; Reynold's case, 87 Ala. 138. When held under two processes, one valid and one void.—Gibson's case, 89 Ala. 174. Prisoner entitled to discharge unless offense committed and probability of his guilt shown.—Riley's case, 94 Ala. 82. Unreasonable delay in executing sentence of law entitles prisoner to discharge. Rand's case, 99 Ala. 302; Goucher's case, 103 Ala. 305. Party committed by justice of peace in cause in which he had final jurisdiction.—Prewitt's case, 99 Ala. 302. Prisoner is not entitled to discharge on account of neglect of clerk to forward transcript.—Cameron's case, 81 Ala. 87. Prisoner held on charge of fraudulently obtaining board at hotel not entitled to discharge.—King's case, 102 Ala. 183. Where party is bound over to grand jury and it finds no bill and does not continue case, prisoner should be discharged.—Stearnes's case, 104 Ala. 93. In extradition cases.—Ex parte Barker, 87 Ala. 4.

4813. Person confined in jail under peace proceeding entitled to writ.—Any person, confined in jail for failing to enter into an un- Dec. 12, 1892, p. 106.

dertaking to keep the peace as required by a magistrate other than a judge of the supreme court or a chancellor, may prosecute a writ of habeas corpus as provided in this chapter; but such writ can be heard only by a judge of the circuit or city court, or a chancellor, who may discharge the applicant, or remand him to jail, or reduce the amount of the undertaking, as may seem right; and if the amount of the undertaking is reduced, the sheriff must discharge the applicant upon entering into the undertaking in the sum fixed by such judge or chancellor.

Feb. 19, 1887, p. 54, §4.

4814. Persons confined as insane.—Any person, confined as insane, may prosecute a writ of habeas corpus as provided in this chapter; and if the judge, or the jury, when the petitioner demands the issues arising to be tried by a jury, shall decide at the hearing that the person is insane, such decision does not bar a second application alleging that such person has been restored to sanity.

4815 (4762) (4937, 4938) (4261, 4262) (710, 711). **Application made by petition on oath; what petition must state.**—The application for the writ must be made by petition, signed either by the party himself for whose benefit it is intended, or by some other person on his behalf; must be verified by the oath of the applicant, to the effect that the statements therein contained are true to the best of his knowledge, information and belief; and must state, in substance, the name of the person on whose behalf the application is made, that he is imprisoned or restrained of his liberty in the county, the place of such imprisonment, if known, the name of the officer or person by whom he is so imprisoned, and the cause or pretense of such imprisonment; and if the imprisonment is by virtue of any warrant, writ, or other process, a copy thereof must be annexed to the petition, or the petition must allege that a copy thereof has been demanded and refused, or must show some sufficient excuse for the failure to demand a copy.

Sufficiency of petition.—Ex parte Champion, 52 Ala. 311; Gibson's case, 44 Ala. 17. Not demurrable for failing to allege petitioner illegally restrained of his own liberty.—Ex parte Champion, 52 Ala. 311. Must be verified by affidavit.—Stibbins v. Butler, Minor, 121; Gibson's case, 44 Ala. 17. Sufficient verification.—Gibson's case, supra; Ex parte Champion, supra. Unnecessary averments, though false, not subject of perjury.—Gibson's case, 44 Ala. 17. See also Charleston's case, 107 Ala. 689; Riley's case, 94 Ala. 82; West's case, 100 Ala. 65.

4816 (4763) (4939) (4263) (712). **If name of party, etc., unknown, he may be described.**—If the name of the person on whose behalf the application is made, or of the officer or person by whom he is imprisoned or detained, is uncertain or unknown, he may be described in any way that is sufficient to identify him.

4817 (4764) (4940) (4264) (713). **To whom petition must be addressed.**—When the person is confined in a county jail, or any other place, on a charge of felony, or under a commitment or an indictment for felony, the petition must be addressed to the judge of the city court, or to the nearest circuit judge, or chancellor, or to the probate judge of the county where the person is confined; and when the person is confined in the penitentiary, or under a sentence, judg-

ment, decree, or order of the supreme court, the chancery court, the circuit court, or the city court, other than an indictment for felony, the petition must be addressed to the judge of the city court, or to the nearest circuit judge or chancellor; in all other cases, it may be addressed to any one of them, or to the probate judge of the county; and when the person is confined in any other place than the county jail or the penitentiary, and on any other than a criminal charge, it may be addressed to any justice of the peace of the county, or to the probate judge thereof.

Section construed; when judge of probate has no jurisdiction; writ of prohibition to prevent him from acting.—Ex parte Ray, 45 Ala. 15. In his county, probate judge has same jurisdiction as circuit judge or chancellor.—Ex parte Keeling, 50 Ala. 474. Jurisdiction of circuit court; when action of circuit judge not restrained by prohibition from supreme court; presumption in favor of circuit judge's decision.—Ex parte State, 51 Ala. 60. When supreme court will issue writ.—Ex parte Simmonton, 9 Port. 383; Ex parte Chaney, 8 Ala. 424; Ex parte Burnett, 30 Ala. 461; Ex parte Hardy, 68 Ala. 303. Its jurisdiction is appellate only, and confined to evidence adduced before lower tribunal. Ex parte Brown, 63 Ala. 187. When proceeding in its nature appellate, and when original.—Kirby's case, 62 Ala. 51. Refusal of bail revisable on habeas corpus.—Ex parte Croom, 19 Ala. 561. Application to revise action of circuit court.—Ex parte Cleveland, 36 Ala. 306; Ex parte Hunter, 39 Ala. 560; Ex parte Jones, 94 Ala. 33.

4818 (4765) (4941) (4265) (714). **To whom addressed in absence of nearest judge.**—When the petition is required to be addressed to the nearest circuit judge or chancellor, and such judge or chancellor is absent, or has refused to grant the writ, or is incapable of acting, it may be addressed to any other circuit judge or chancellor; but, in such case, before the writ is granted, proof must be made, either by the oath of the applicant, or other sufficient evidence, of the particular facts which justify such address.

4819 (4766) (4942) (4266) (715). **Writ granted without delay.; before whom returnable.**—The judge, chancellor, or justice, to whom the application is made, must grant the same without delay, unless it appears from the petition itself, or from the documents thereunto annexed, that the person imprisoned or restrained is not, under the provisions of this chapter, entitled to the benefit of the writ. When the person is confined in the penitentiary, the writ must be made returnable before the circuit court of Elmore county, or the circuit or city court of the county in which the convict is confined; but if the writ is granted more than ten days before the time fixed by law for the holding of the circuit court of Elmore county, or the circuit or city court of the county in which the convict is confined, it must be made returnable before the nearest circuit or city judge or chancellor; when granted by a justice of the peace, it must be made returnable before the judge of probate of the county, or the judge of the city court, or the nearest circuit judge or chancellor; and in all other cases, it must be made returnable before the officer by whom it is granted.

4820 (4767) (4943) (4267) (716). **Form of writ.**—The writ may be, in substance, as follows:

"The State of Alabama, ——— county. } To the sheriff of ——— county (or other person by whom the party is imprisoned or restrained): You are hereby commanded to have the body of

A. B., alleged to be detained by you, by whatsoever name the said A. B. is called or charged, with the cause of such detention, before C. D., judge of the circuit court (or other officer, as required by the preceding section), on ——, at —— (specifying the time and place, or immediately after the receipt of this writ, as the case may be), to do and receive what shall then and there be considered concerning the said A. B. Dated this —— day of ———, 18—.

(Signed by the officer, with his official title.)"

4821 (4768) (4944) (4268) (717). **Not disobeyed for want of form or mistake.**—The writ must not be disobeyed on account of any want of form, or any misdescription of the person to whom it is addressed; and it must be presumed to have been addressed to the person on whom it is served, notwithstanding any mistake in the name or address.

4822 (4769) (4945) (4269) (718). **Notice to adverse party in interest.**—If it appears from the petition, or from the documents thereunto annexed, that the party is imprisoned or detained by virtue of any process under which any other person has an interest in continuing his imprisonment or restraint, the officer issuing the writ must indorse thereon an order requiring the applicant, or some one else for him, to give notice to such person, or to his attorney, of the issue of the writ, and of the time and place at which it is returnable, in order that he may, if he thinks proper, appear and object to the discharge of the party who is imprisoned; and if such notice is not given, when the party who is entitled to it is within fifty miles of the place of examination, the party who is imprisoned must not be discharged.

4823 (4770) (4946) (4270) (719). **Notice in criminal cases; waiving examination; presumption.**—If it appears from the petition, or from the documents thereunto annexed, that the party is imprisoned or detained on any criminal charge or accusation, the officer issuing the writ must indorse thereon an order requiring the applicant, or some one else for him, to give notice to the solicitor of the circuit, or to the prosecutor, or principal agent in procuring the arrest, of the issue of the writ, and of the time and place at which it is returnable; and if such notice is not given, when the solicitor or other person entitled to it is within fifty miles of the place of examination, the party who is imprisoned must not be discharged. But if the party is charged with an offense which is bailable, and he waives an examination into the facts, the judge may fix the amount of bail, without notice to the solicitor or prosecutor; and, in so doing, must act on the presumption that the offense is of the highest grade.

4824 (4771) (4947) (4271) (720). **Precept to sheriff or constable.** At the time of issuing the writ, or at any time afterwards before the hearing, the officer issuing the writ must, on a proper showing, issue a precept, directed to any sheriff or constable of the state, commanding him to have the body of the person who is imprisoned or re-

strained before the officer before whom the writ is returnable, at the time and place at which it is returnable; which precept must be executed by any sheriff or constable into whose hands it may come, according to its mandate.

4825 (4772) (4948) (4272) (721). **Subpœnas for witnesses.**—Subpœnas for witnesses must be issued at any time before the hearing, on the application of either party, by the clerk of the circuit or city court of the county to which the writ is returnable, or by the probate judge by whom the writ was issued, or by any justice of the peace of the county in which the witness resides; which subpœnas must be directed to the sheriff, or to any constable of the county in which the witness resides, and must be executed and returned as in other cases.

4826 (4773) (4949) (4273) (722). **Service of writ; by whom, and how made.**—The writ must be served by the sheriff, deputy-sheriff, or some constable of the county in which it is issued, or in which the person on whose behalf it is sued out is imprisoned or detained, by delivering a copy to the person to whom it is directed, and showing the original, if demanded; and if such person cannot be found, or conceals himself, or refuses admittance to the officer, it may be served by leaving a copy at the place where the party is confined, with any person of full age, who, for the time being, has charge of the party, or by posting it in a conspicuous place on the outside of the house or building in which the party is confined.

4827 (4774) (4950) (4274) (723). **Return; when made.**—The person to whom the writ is directed, after due service thereof, must make his return, if practicable, on the day therein specified; and if no day is therein specified, and the place to which the return is to be made is not more than thirty miles from the place where the party is imprisoned or detained, the return must be made within two days after service; if more than thirty, and less than one hundred miles, within five days, and if over one hundred miles, within eight days after service.

4828 (4775) (4951) (4275) (724). **Form and contents of return.** The return must be signed by the person making it, and be verified by his oath, unless he is a sworn public officer, and makes the return in his official capacity; and it must state, plainly and unequivocally, whether or not he has the party in his custody or power, or under his restraint; if so, by what authority, and the cause thereof, setting out the same fully, together with a copy of the writ, warrant, or other written authority, if any; and if he has had the party in his custody or power, or under his restraint, at any time before or after the date of the writ, but has transferred such custody or restraint to another, to whom, at what time, for what cause, and by what authority, such transfer was made.

4829 (4776) (4952) (4276) (725). **Body also produced, with warrant, etc.**—At the time of making the return, he must also produce the person on whose behalf the writ was sued out, according to the command of the writ, and the original warrant, writ or other

written authority under which he was detained; but if, from sickness or infirmity, the party cannot be produced without danger, that fact must be stated in the return, and verified by oath, and, if required, established by other sufficient evidence.

4830 (4777) (4953) (4277) (726). **Proceedings when body not produced on account of sickness, etc.**—When the party on whose behalf the writ is sued out, on account of sickness or infirmity, is not produced, the court, chancellor, or judge before whom the writ is returnable, if satisfied of such sickness or infirmity, may proceed to decide on the return as if the party had been produced; or may proceed to the place where he is imprisoned or detained, and there make the examination; or may adjourn the examination to another time.

4831 (4778) (4954) (4278) (727). **Proceedings when body produced under precept.**—If the party is brought before the court, judge, or chancellor, by virtue of a precept issued under the provisions of section 4824 (4771), the case must be heard and determined as if he had been produced in return to the writ.

4832 (4779) (4955) (4279) (728). **Denial of return; examination, adjournment, bail, etc.**—The party on whose behalf the writ is sued out may deny any of the facts stated in the return, and allege any other facts which may be material in the case; and the court, chancellor, or judge may examine, in a summary way, into the cause of the imprisonment or detention, and hear the evidence adduced; may adjourn the examination from time to time, as the circumstances of the case may require, and in the meantime remand the party, or commit him to the custody of the sheriff of the county, or place him under such other custody as his age or other circumstances may require, or, if the character of the charge authorize it, take bail from him, in a sufficient amount, for his appearance from day to day until judgment is given.

4833 (4780) (4956) (4280) (729). **Forfeiture of undertaking of bail pending examination.**—If the party fails to appear, as required by his undertaking, an entry of forfeiture must be indorsed thereon, signed by the judge or chancellor, and returned to the circuit or city court of the county in which the examination is had; and the same proceedings must be thereon had in such court, as if the undertaking had been taken in such court, the indorsement of forfeiture being presumptive evidence of that fact.

4834 (4781) (4957) (4281) (730). **When party discharged; when remanded.**—If no legal cause for the imprisonment or restraint of the party is shown, he must be discharged; but if it appears that he is held or detained in custody by virtue of process issued by a court or judge of the United States, in a case of which such court or judge has exclusive jurisdiction, or by virtue of any legal engagement or enlistment in the army or navy of the United States, or, being subject to the rules and articles of war, is confined by any one legally acting by authority thereof, or is in custody for any public offense committed in any other state or territory, for which, by the constitution and laws of the United States, he should be delivered up to the authority

of such state or territory, or that he is otherwise legally detained, he must be remanded.

When entitled to be discharged.—Riley's case, 94 Ala. 82.

4835 (4782) (4958) (4282) (731). **When bailed, and how.**—If it appears that he is charged with a public offense which is bailable, he must be admitted to bail, on offering sufficient bail; and if sufficient bail is not offered, the amount of bail required must be indorsed on the warrant, and the court to which he is required to appear; and he may be afterwards discharged by the sheriff of the county on giving sufficient bail in the amount so required.

Holcombe's case, 99 Ala. 185.

4836 (4783) (4960) (4284) (733). **Undertaking of bail returned to court; forfeiture thereof.**—All undertakings of bail taken by any judge, chancellor, or sheriff, under the provisions of the preceding section, must be transmitted by him to the clerk of the court before which the party is bound to appear, by the first day of the next succeeding term; and may be forfeited, and the same proceedings thereon had, as against other bail in criminal cases.

4837 (4784) (4961) (4285) (734). **Judgment, etc., or commitment for contempt, not inquired into.**—No court, chancellor, or judge, on the return of a writ of habeas corpus, has authority to inquire into the regularity or justice of any order, judgment, decree, or process of any court legally constituted, or into the justice or propriety of any commitment for contempt made by a court, officer, or body, according to law, and charged in such commitment.

Merits of the case against a party committed by a magistrate may be gone into anew on hearing of application for habeas corpus; may demand hearing on all the evidence.—Ex parte Mahone, 30 Ala. 49; Ex parte Champion, 52 Ala. 311. Mandamus will lie to compel hearing on the evidence.—Ex parte Mahone, supra; Ex parte Shaundies, 66 Ala. 134. See ex parte Champion, supra. Return presumed to be true, when no evidence produced on either side, and averments of petition not thereby admitted.—Ex parte Hunter, 39 Ala. 560. Not to be discharged unless witnesses previously examined against him are produced, if attainable; may be bailed.—Ex parte Champion, 52 Ala. 311. Illegality, not error or irregularity, can be inquired into.—Kirby's case, 62 Ala. 51. See West's case, 100 Ala. 65 (criticising ex parte Champion, supra). Recalcitrant witness held for contempt not entitled.—Ex parte Pearce, 111 Ala. 99.

4838 (4785) (4962) (4286) (735). **If under legal process, when discharged.**—If it appears that the party is in custody, by virtue of process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, he can only be discharged—

1. Where the jurisdiction of such court has been exceeded, either as to matter, place, sum, or person.

2. Where, though the original imprisonment was lawful, the party has become entitled to his discharge by reason of some subsequent act, omission, or event.

3. Where the process is void in consequence of some defect in matter or substance required by law.

4. Where the process, though in proper form, was issued in a case, or under circumstances, not allowed by law

5. Where the process is not authorized by any judgment, order, or decree, or by any provision of the law.

6. Where the person who has the custody of him, under any order or process, is not the person authorized by law to detain him.

If in confinement under final judgment of court of competent jurisdiction, not discharged on account of mere errors or irregularities, however gross.—Ex parte Sam, 51 Ala. 34. If warrant and commitment good, irregularity of complaint no ground for habeas corpus.—Ex parte McGlawn, 75 Ala. 38. Power of court to inquire into validity of order, when detention is claimed under civil process.—Morrow v. Bird, 6 Ala. 834. Party in custody under defective indictment will not, for such defect, be discharged on habeas corpus.—Ex parte Whitaker, 43 Ala. 323. Party held under valid process should not be discharged "by reason of some subsequent act, omission or event," unless the facts have the legal force and effect of "former acquittal."—Ex parte State, 76 Ala. 482. Prisoner may go behind return and show no offense was committed.—Riley's case, 94 Ala. 82; West's case, 100 Ala. 65. Burden, order and sufficiency of proof on hearings.—West's case, 100 Ala. 65; Robinson's case, 86 Ala. 622; McGlawn's case, 75 Ala. 38; Tate's case, 76 Ala. 482. When only proof of amount of bail is admissible.—Robinson's case, 86 Ala. 622; West's case, 100 Ala. 65. If it appears that no offense has been committed, or that there is no probable cause of prisoner's guilt, he should be discharged.—Charleston's case, 107 Ala. 688; Riley's case, 94 Ala. 82. When mandamus will lie to compel hearing or issuing of writ.—Jones's case, 94 Ala. 34; Charleston's case, 107 Ala. 688. Loose or informal judgment of conviction by justice no ground for habeas corpus.—Gayle's case, 108 Ala. 514. When not entitled to writ on account of delay in committal to prison.—Espalla's case, 109 Ala. 92. When entitled to discharge.—Ex parte Goucher, 103 Ala. 305; Ex parte Stewart, 98 Ala. 66; Ex parte King, 82 Ala. 59; Ex parte Crews, 78 Ala. 457; Ex parte Kirby, 62 Ala. 51; Ex parte Pearson, 59 Ala. 654.

4839 (4786) (4963) (4287) (736). **When remanded or committed for public offense.**—If it appears that the party has been legally committed for any public offense, or that he is guilty of such an offense, although his commitment was irregular, he may be remanded to the custody or restraint from which he was taken, if the person under whose custody or restraint he was is legally entitled thereto; and if not so entitled, he must be committed to the custody of the proper officer or person.

4840 (4787) (4964) (4288) (737). **After discharge not again arrested.**—When a person has once been discharged on habeas corpus, he cannot be again imprisoned, restrained or kept in custody, for the same cause, unless he is indicted therefor, or, after a discharge for defect of proof, is again arrested on sufficient proof, and committed by legal process.

Does not apply where first commitment was under void warrant.—Cameron's case, 100 Ala. 395.

4841 (4788) (4965) (4289) (738). **Penalty for refusal to discharge, or for rearrest.**—Any officer, or other person, who has the custody of a party produced on habeas corpus, and who detains him after an order of the court, chancellor, or judge for his discharge or enlargement, or afterwards arrests him without a legal and proper cause, warrant or other process, must, on conviction thereof, be fined not less than fifty, nor more than five hundred dollars; and is also responsible in a civil action for any damages the party may have sustained.

4842 (4789) (4966) (4290) (739). **Penalty for refusal to give copy of warrant, etc.**—Any officer, who refuses or neglects to deliver a true copy of the order, writ, warrant, or process, by virtue of

which he detains any prisoner, either to the prisoner himself, or to any other person who applies for the same on his behalf, for six hours after demand made, forfeits to the prisoner two hundred dollars, and is also guilty of a misdemeanor, on conviction of which he must be fined not less than fifty, nor more than five hundred dollars; but no officer is required to deliver more than two copies of such order, writ, warrant, or process.

4843 (4790) (4967) (4291) (740). **Penalty for refusal to obey writ.**—Any person, to whom a writ of habeas corpus is directed, and who refuses to receive the same, or neglects to obey and execute it according to the provisions of this chapter (unless sufficient excuse is shown for such refusal or neglect), is responsible in damages to the party aggrieved, and is guilty of a contempt, and also of a misdemeanor; and, on conviction thereof, must be fined not less than fifty dollars.

4844 (4791) (4968) (4292) (741). **Attachment against person refusing.**—It is the duty of the officer before whom such writ is returnable, in case of such refusal or neglect on the part of the person to whom it is directed, to proceed forthwith against him, by process of attachment, as for contempt, to compel obedience to the writ, and to punish him for such contempt; and when such attachment is issued against the sheriff, or his deputy, it may be directed to the coroner, or to any constable, and may be executed by such coroner or constable.

4845 (4792) (4969) (4293) (742). **Penalty for eluding writ.** Any person, who has in his custody, or under his control, a person who is entitled to a writ of habeas corpus, and, either before or after the issue of such writ, with intent to elude the service or effect thereof, transfers such person to the custody of another, or places him under the power or control of another, or conceals him, or changes his place of confinement, forfeits to the party aggrieved the sum of five hundred dollars, and is also guilty of a misdemeanor; and, on conviction thereof, must be fined not less than fifty dollars, and may also be imprisoned in the county jail not more than twelve months.

4846 (4793) (4970) (4294) (743). **Penalty on defaulting witness; proceedings therefor.**—If any witness, duly subpœnaed under the provisions of this chapter, fails to attend as required, the judge or chancellor before whom the writ is returnable must indorse such failure on the back of the subpœna, and deliver it to the clerk of the circuit court of the county in which the examination is had; and the same proceedings must be thereon had as against defaulting witnesses in that court, the indorsement being presumptive evidence of such default.

4847 (4794) (4971) (4295) (744). **Attendance of witnesses; how proved and taxed.**—Witnesses may prove their attendance before the judge or chancellor, as in other cases, and have the same taxed in the bill of costs, on the subsequent conviction of the party, where he is detained on a criminal charge.

4848 (4795) (4972) (4296) (745). **Costs discretionary; how taxed and collected.**—In other cases, the court, judge, or chancellor may impose the costs, or any portion thereof, on either party; and when the writ is returnable before a chancellor, or before a judge of the circuit or city court, the costs must be taxed by the clerk of such circuit or city court, and collected by execution.

As amended Feb. 19, 1895, p. 699.

4849 (4796) (4973) (4297) (746). **Fees of officers; how taxed and collected.**—The officer serving the writ is entitled to one dollar for such service, and to five cents for each mile in going and returning, to be proved by his own oath, before the judge of probate or clerk; and for issuing and serving subpœnas, the officers are entitled to the same fees as in other cases; for holding an examination, the judge of probate is entitled to three dollars; which fees must be taxed in the bill of costs in the case provided for by section 4847 (4794), and in other cases collected by execution issued by the judge of probate.

4850 (4797) (4974) (4298) (747). **Costs before probate judge; how taxed, etc.**—When the writ is returnable before the judge of probate, he must tax the costs, and may collect the same by execution, except in the case provided for in section 4847 (4794).

4851 (4798) (4975) (4299) (748). **Execution for costs, returnable when.**—An execution for costs, issued under the last three sections, may be made returnable at any day, not less than one month, nor more than three months from the date of its issue, except upon the conviction of a public offense.

4852 (4799) (4976) (4300) (749). **Guards summoned when necessary.**—When the person, on whose behalf the writ is sued out, is charged with a public offense, the officer or person having charge of him may summon a sufficient guard to aid in conveying him before the court, judge, or chancellor before whom the writ is returnable, and conveying him back again, if he is not discharged.

4853 (4800) (4977) (4301) (750). **Compensation of guards; penalty.**—In the case provided for in the preceding section, the officer and guards are entitled to the same compensation as for removing any prisoner on a change of venue, to be paid in the same manner; and such guards are under the control of the officer summoning them; and any guard, who refuses to obey or violates the lawful instructions of such officer, is guilty of a misdemeanor.

CHAPTER 158.

HOMICIDE. 4854–4863.

4854 (3725) (4295) (3653) (111). **Murder; different degrees of.** Every homicide, perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious and premeditated killing; or

committed in the perpetration of, or the attempt to perpetrate, any arson, rape, robbery, or burglary, or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed; or perpetrated by any act greatly dangerous to the lives of others, and evidencing a depraved mind regardless of human life, although without any preconceived purpose to deprive any particular person of life, is murder in the first degree; and every other homicide, committed under such circumstances as would have constituted murder at common law, is murder in the second degree. (Form 63.)

Felonious homicide generally; its different degrees stated.—Mitchell's case, 60 Ala. 26; Fields's case, 52 Ala. 348; Myers's case, 62 Ala. 599; Ex parte Brown, 65 Ala. 446. Statute has classified, but not reduced offense of common-law murder.—Mitchell's case, 60 Ala. 26; Brown's case, 109 Ala. 70; Judge's case, 58 Ala. 406; Ex parte Nettles, Ib. 268; McManus's case, 36 Ala. 285; Fields's case, 52 Ala. 348; Arp's case, 97 Ala. 5. **Murder in first degree** must be willful, deliberate, malicious and premeditated, and these essential constituents must concur and coexist.—Brown's case, 109 Ala. 70; Mitchell's case, 60 Ala. 26; Lang's case, 84 Ala. 1; Ex parte Sloane, 95 Ala. 22; Ezell's case, 102 Ala. 101; Smith's case, 68 Ala. 424; Ex parte Brown, 65 Ala. 446; Holley's case, 75 Ala. 14. Words "willful, deliberate, malicious and premeditated" grouped under the phrase "formed design."—Mitchell's case, 60 Ala. 26. But this definition has been criticised and qualified.—Hornsby's case, 94 Ala. 55; Domingus's case, 94 Ala. 9; Miller's case, 107 Ala. 40; Burton's case, Ib. 108; Amos's case, 83 Ala. 1; Floyd's case, 82 Ala. 16. **Premeditation and deliberation** defined. Daughdrill's case, 113 Ala. 7; Cleveland's case, 86 Ala. 1; Lang's case, 84 Ala 1; Mitchell's case, 60 Ala. 26; Brown's case, 65 Ala. 446. **Willful** defined. Mitchell's case, 60 Ala. 26; Lang's case, 84 Ala. 1. Murder not always willful, nor is every willful killing murder.—Bob's case, 29 Ala. 20. **Malice** defined. Mitchell's case, 60 Ala. 26; Holley's case, 75 Ala. 14; Hadley's case, 55 Ala. 31; Cribbs's case, 86 Ala. 613; Lang's case, 84 Ala. 1; Boulden's case, 102 Ala. 78. Distinguishes murder from every other form of homicide.—Jackson's case, 74 Ala. 26; Roberts's case, 68 Ala. 156; De Arman's case, 77 Ala. 10; Smith's case, 83 Ala. 26. Every unexplained homicide is presumptively felonious.—Hadley's case, 55 Ala. 31; Clements's case, 50 Ala. 117; Perry's case, 94 Ala. 25. **Malice presumed from use of deadly weapon,** unless the evidence which proves the killing rebuts the presumption.—Hornsby's case, 94 Ala. 55; Compton's case, 110 Ala. 24; Robinson's case, 108 Ala. 14; Miller's case, 107 Ala. 40; Gibson's case, 89 Ala. 121; Warrick's case, 73 Ala. 57; Sylvester's case, 71 Ala. 17; s. c., 72 Ala. 201; De Arman's case, Ib. 351; Commander's case, 60 Ala. 1; Hadley's case, 55 Ala. 31; Eiland's case, 52 Ala. 322; Roberts's case, 68 Ala. 156; Grant's case, 62 Ala. 233; Williams's case, 77 Ala. 53; Wilkins's case, 98 Ala. 1. If facts and circumstances attending the killing are in evidence, the inference of malice must be drawn from whole evidence, and by the jury.—Eiland's case, 52 Ala. 322; Hornsby's case, 94 Ala. 55. **Deadly weapon** defined.—Sylvester's case, 72 Ala. 201. Generally to be determined by court.—Ib. But see Thomas's case, 103 Ala. 18. See also McKee's case, 82 Ala. 32; Dolan's case, 81 Ala. 11; McDaniel's case, 76 Ala. 1; Webb's case, 100 Ala. 47; Ex parte Nettles, 58 Ala. 268. **Homicides which are murder**; by poison and lying in wait.—Mitchell's case, 60 Ala. 26. See also Johnson's case, 17 Ala. 618. Killing in attempting felonies named is murder in first degree regardless of malice or specific intent to kill.—Kilgore's case, 74 Ala. 1; Fields's case, 52 Ala. 348. Killing one person by blow aimed at another.—Bob's case, 29 Ala. 20; Tidwell's case, 70 Ala. 33; Clarke's case, 78 Ala. 474; Murphy's case, 108 Ala. 10. Killing innocent person under duress. Arp's case, 97 Ala. 5. Homicide perpetrated by act greatly dangerous to the lives of others.—Mitchell's case, 60 Ala. 26. As to throw cars from track.—Ib.; Presley's case, 59 Ala. 98. And to fire pistol at night through window of lighted room.—Washington's case, 60 Ala. 10. Killing to prevent mere trespass to person or property.—Jones's case, 76 Ala. 8; Harrison's case, 24 Ala. 67; Simpson's case, 59 Ala. 1; Carroll's case, 23 Ala. 28; Oliver's case, 17 Ala. 587; Noles's case, 26 Ala. 31. Killing person charged with misdemeanor who flees from arrest.—Handley's case, 96 Ala. 48; Williams's case, 44 Ala. 41; Clement's case, 50 Ala. 117. Killing one who interferes to prevent a felony.—Dill's case, 25 Ala. 15. Unintentional homicide resulting from an attempt to commit a felony.—Isham's case, 38 Ala. 213. Where mutual blows pass.—Nettles's case, 58 Ala. 268. Death caused by excessive resistance of an assault.—Judge's case, 58 Ala. 406. Where two fight by mutual consent.—See Brown's case, 74 Ala.

478; Cates's case, 50 Ala. 166. Killing in melee.—Smith's case, 88 Ala. 73. **Murder in second degree** is an unlawful killing with malice, but without deliberation or premeditation.—McQueen's case, 103 Ala. 12; Ward's case, 96 Ala. 100; Ezell's case, 102 Ala. 101; Fields's case 52 Ala. 348. When committed without intent to kill.—Nutt's case, 63 Ala. 180. All common-law murders not included in statute.—Mitchell's case, 60 Ala. 26. **Manslaughter in the first degree** is the result of passion, suddenly engendered by present provocation which, in no case, must be less than an assault.—Mitchell's case, 60 Ala. 26; Cates's case, 50 Ala. 166; McNeezer's case, 63 Ala. 169. There must be an intention to kill, or an act of violence from which ordinarily death or great bodily injury may result.—Lewis's case, 96 Ala. 6; Harrington's case, 83 Ala. 9 (qualifying McManus's case, 36 Ala. 285); Williams's case, 83 Ala. 16; White's case, 84 Ala. 421; McManus's case, 36 Ala. 285; Collier's case, 69 Ala. 247; Wills's case, 74 Ala. 21; Brown's case, 65 Ala. 446. There must be criminal intent or negligence so gross as to imply it.—Hampton's case, 45 Ala. 82; White's case, 84 Ala. 421. Death caused by intentional use of a deadly weapon, not in self-defense, can never be less than manslaughter in the first degree. Collier's case, 69 Ala. 247; Ex parte Brown, 65 Ala. 446; McManus's case, 36 Ala. 285; Mitchell's case, 60 Ala. 26; Fields's case, 52 Ala. 348; Oliver's case, 17 Ala. 587. Manslaughter in first degree by one engaged in combat.—Ex parte Brown, 65 Ala. 446; Brown's case, 74 Ala. 478; Cates's case, 50 Ala. 156. In resisting unlawful arrest.—Noles's case, 26 Ala. 31; Brown's case, 109 Ala. 70. Killing wife or paramour taken in the act of adultery.—Hooks's case, 99 Ala. 166. When taken in compromising situation.—Ib. On coming for first time to knowledge of illicit relation between deceased and sister of defendant. Tally's case, 102 Ala. 25; Robinson's case, 108 Ala. 14. The **provocation** of mere words can never reduce homicide to manslaughter.—Smith's case, 103 Ala. 4; Mitchell's case, 60 Ala. 26; Ex parte Sloane, 95 Ala. 22; Nutt's case, 63 Ala. 180; Kennedy's case, 85 Ala. 326; Johnson's case, 102 Ala. 1; Reese's case, 90 Ala. 624; Lane's case, 84 Ala. 11; Grant's case, 62 Ala. 233; Judge's case, 58 Ala. 406. Words may be weighed to determine whether the murder is in first or second degree.—Compton's case, 110 Ala. 24; Ex parte Sloane, 95 Ala. 22; Watson's case, 82 Ala. 10; Jackson's case, 77 Ala. 18. An assault or acts evincing an intention to resort to immediate use of force may reduce to manslaughter.—Ex parte Sloane, 95 Ala. 22; Reese's case, 90 Ala. 624; Stewart's case, 78 Ala. 436; Kennedy's case, 85 Ala. 326. Statute making abusive language justification for assault has no application in homicide cases.—Prior's case, 77 Ala. 56. **Cooling time.**—Stillwell's case, 107 Ala. 16 (said here to be question for court); Hooks's case, 99 Ala. 166 (said here to be question for jury); McNeill's case, 102 Ala. 121; Felix's case, 18 Ala. 720; Kennedy's case, 85 Ala. 326; Keiser v. Smith, 71 Ala. 481. **Former difficulty, ill will, motive,** etc., **as proof of malice;** but not the particulars.—Stitt's case, 91 Ala. 10; Garrett's case, 76 Ala. 18; Rutledge's case, 88 Ala. 85; Stewart's case, 78 Ala. 436; Clarke's case, Ib. 474; McAnally's case, 74 Ala. 9; Marler's case, 68 Ala. 580; Gray's case, 63 Ala. 66; Hudson's case, 61 Ala. 333; Faire's case, 58 Ala. 74; Commander's case, 60 Ala. 1; Noles's case, 26 Ala. 31; Ingram's case, 39 Ala. 247. Failure to prove motive is not a circumstance in favor of accused.—Cross's case, 68 Ala. 476; Hornsby's case, 94 Ala. 55; Clifton's case, 73 Ala. 473. State may prove motive, but not required.—Clifton's case, supra. As to what facts admissible as tending to prove motive.—Flanagan's case, 46 Ala. 703; Robinson's case, 108 Ala. 14; Ex parte Nettles, 58 Ala. 268; Childs's case, 55 Ala. 25; Commander's case, 60 Ala. 1; Noles's case, 26 Ala. 31; Hall's case, 40 Ala. 698; Kelsoe's case, 47 Ala. 573; Baalam's case, 17 Ala. 451; Phillips's case, 68 Ala. 469; Garrett's case, 76 Ala. 18. What not admissible for prisoner as showing motive.—Forney's case, 98 Ala. 19; Hadley's case, 55 Ala. 31; Dupree's case, 33 Ala. 380. Motive to get rid of a witness.—Hodge's case, 97 Ala. 37; Marler's case, 67 Ala. 55; s. c., 68 Ala. 580. Intimacy of defendant with wife of deceased.—Pate's case, 94 Ala. 14. Intimacy of husband with other woman when charged with murder of his wife.—Johnson's case, 94 Ala. 35. And his contemplated marriage with another woman.—Hawes's case, 88 Ala. 37. That there was an indictment against accused for burglary of house of the deceased.—Carden's case, 84 Ala. 417. That accused was discharged by partnership of which deceased was member.—Morrison's case, 84 Ala. 405. **Manslaughter in second degree** is where death is unintentionally caused by an unlawful act (not felonious), or by a lawful act done in unlawful manner.—Johnson's case, 94 Ala. 35; Williams's case, 83 Ala. 16; Harrington's case, 83 Ala. 9; Fitzgerald's case, 112 Ala. 34; Sanders's case, 105 Ala. 4; Jenkins's case, 82 Ala. 25. **Justifiable homicide** by an officer when resisted in making an arrest.—Clements's case, 50 Ala. 117. Killing a felon who resists or flees from arrest.—Williams's case, 44 Ala. 41. Killing to prevent forcible and atrocious felonies.—Crawford's case, 112 Ala. 1; Storey's case, 71 Ala. 329; Oliver's case, 17 Ala. 587; Carroll's case, 23 Ala. 28; Dill's case, 25 Ala. 15. But the right to kill does not extend to secret and

fraudulent felonies.—Storey's case, 71 Ala. 329. In defense of relative.—Karr's case, 106 Ala. 1; Whatley's case, 91 Ala. 108; Gibson's case, Ib. 64. Killing innocent person under duress.—Arp's case, 97 Ala. 5; Murphy's case, 108 Ala. 10. **The elements of self-defense enumerated.**—Jackson's case, 77 Ala. 18; Jackson's case, 94 Ala. 85; Williams's case, 103 Ala. 33; Miller's case, 107 Ala. 40; Wilkins's case, 98 Ala. 1; Springfield's case, 96 Ala. 21; Lewis's case, 51 Ala. 1; Oliver's case, 17 Ala. 587; Cleveland's case, 86 Ala. 1; Brown's case, 83 Ala. 33; Harrison's case, 78 Ala. 5; Tesney's case, 77 Ala. 33; Storey's case, 71 Ala. 329; De Arman's case, Ib. 351; Bain's case, 70 Ala. 4; Ex parte Brown, 65 Ala. 446; Cross's case, 63 Ala. 40; Mitchell's case, 60 Ala. 26; Hughey's case, 47 Ala. 97. **Freedom from fault.**—Crawford's case, 112 Ala. 1; McQueen's case, 103 Ala. 12; Johnson's case, 102 Ala. 1; Holmes's case, 100 Ala. 80; Kirby's case, 89 Ala. 63; Parker's case, 88 Ala. 4; Lewis's case, Ib. 11; Baker's case, 81 Ala. 38; Storey's case, 71 Ala. 329; Howard's case, 110 Ala. 92; Miller's case, 107 Ala. 40; Naugher's case, 105 Ala. 26; Boulden's case, 102 Ala. 78; Webb's case, 100 Ala. 47; Garrett's case, 97 Ala. 18; McDaniel's case, Ib. 14; Young's case, 95 Ala. 4; Davis's case, 92 Ala. 20; Cotten's case, 91 Ala. 106; Whatley's case, Ib. 108; Zaner's case, 90 Ala. 651; Kirby's case, 89 Ala. 63; Waller's case, Ib. 79; Parker's case, 88 Ala. 4; Rutledge's case, Ib. 85; Williams's case, 83 Ala. 16; Jordan's case, 81 Ala. 20; Jackson's case, Ib. 33; Baker's case, Ib. 38; Jones's case, 79 Ala. 23; Henry's case, Ib. 42; Prior's case, 77 Ala. 56; Eiland's case, 52 Ala. 322; Jones's case, 76 Ala. 8; McDaniel's case, Ib. 1; Holley's case, 75 Ala. 14; Bain's case, 70 Ala. 4; Ex parte Brown, 65 Ala. 446; Leonard's case, 66 Ala. 461; Lewis's case, 51 Ala. 1. **Retreat.**—Howard's case, 110 Ala. 92; Robinson's case, 108 Ala. 14; Evans's case, 109 Ala. 11; Holmes's case, 100 Ala. 80; Watkins's case, 89 Ala. 82; Roden's case, 97 Ala. 54; Davis's case, 92 Ala. 20; Hammil's case, 90 Ala. 577; Poe's case, 87 Ala. 65; Fallin's case, 86 Ala. 13; Williams's case, 83 Ala. 16; Watson's case, 82 Ala. 10; Carter's case, Ib. 13; McKee's case, Ib. 32; Finch's case, 81 Ala. 41; Hull's case, 79 Ala. 32; Storey's case, 71 Ala. 329; Harrison's case, 78 Ala. 5; Henderson's case, 77 Ala. 77; Eiland's case, 52 Ala. 322; Pierson's case, 12 Ala. 149. **From dwelling-house or place of business.**—Naugher's case, 105 Ala. 26; Holmes's case, 100 Ala. 80; Webb's case, Ib. 47; Wilkins's case, 98 Ala. 1; Askew's case, 94 Ala. 4; Perry's case, 94 Ala. 25; Lee's case, 92 Ala. 15; Martin's case, 90 Ala. 602; Brinkley's case, 89 Ala. 34; Watkins's case, Ib. 82; Roberts's case, 68 Ala. 156; Corey's case, 76 Ala. 78; Jones's case, Ib. 8. Where one is a guest in the house of another.—Crawford's case, 112 Ala. 1. **Right of self-defense lost by fault may be revived by bona fide retreat.**—Crawford's case, 112 Ala. 1; Parker's case, 88 Ala. 4; Stillwell's case, 107 Ala. 16; Bostic's case, 94 Ala. 45. **Retreat when assailed with deadly weapon.**—McDaniel's case, 97 Ala. 14; Fariss's case, 85 Ala. 1; Storey's case, 71 Ala. 329. **Impending peril.**—Evans's case, 109 Ala. 11; Thomas's case, 106 Ala. 19; Miller's case, 107 Ala. 40; Roden's case, 97 Ala. 54; Keith's case, Ib. 32; Springfield's case, 96 Ala. 81; Kirby's case, 89 Ala. 63; Askew's case, 94 Ala. 4; Baker's case, 81 Ala. 38; Jackson's case, 78 Ala. 471; Rogers's case, 62 Ala. 170; Harrison's case, 24 Ala. 67; Holmes's case, 23 Ala. 17; Dupree's case, 33 Ala. 380; Oliver's case, 17 Ala. 587. **Burden of proof as to self-defense.**—Henson's case, 112 Ala. 41; s. c., 22 So. Rep. 127; Miller's case, 107 Ala. 40; Dent's case, 105 Ala. 14; Boulden's case, 102 Ala. 78; Holmes's case, 100 Ala. 80 (following Gibson's case, 89 Ala. 121, which repudiates Brown's case, 83 Ala. 33); Wilkins's case, 98 Ala. 1; Stitt's case, 91 Ala. 10; Cleveland's case, 86 Ala. 1; Rogers's case, 62 Ala. 170. **Threats made by accused** are admissible.—Wilson's case, 110 Ala. 1; Drake's case, Ib. 9; Beavers's case, 103 Ala. 36; Redd's case, 68 Ala. 492; Pate's case, 94 Ala. 14; Griffin's case, 90 Ala. 596; Wims's case, Ib. 623; Lang's case, 86 Ala. 36; Evans's case, 62 Ala. 6; Rains's case, 88 Ala. 91; Pulliam's case, Ib. 1; Poe's case, 87 Ala. 65. General threat to kill somebody.—King's case, 89 Ala. 146; Jones's case, 76 Ala. 8; Ford's case, 71 Ala. 385; Myers's case, 62 Ala. 599. Made by accomplice.—Marler's case, 67 Ala. 55. Made after blow resulting in death.—McManus's case, 36 Ala. 285. Mere threats by deceased to take life will not justify homicide.—Hughey's case, 47 Ala. 97; Roberts's case, 68 Ala. 515; Roberts's case, Ib. 156; Poe's case, 87 Ala. 65. **Communicated threats** by deceased, admissible as tending to show that accused had reason to apprehend danger to life or limb.—Pritchett's case, 22 Ala. 39; Dupree's case, 33 Ala. 380; Powell's case, 52 Ala. 1; Myers's case, 62 Ala. 599; De Arman's case, 71 Ala. 351. General threat by deceased not admissible for defendant.—King's case, 89 Ala. 146. Evidence of threats inadmissible unless there be evidence of some act or demonstration by deceased at the time of killing, indicating intention to carry out threats.—Hughey's case, 47 Ala. 97; Green's case, 69 Ala. 6; Payne's case, 60 Ala. 80. **Uncommunicated threats** by deceased, as a general rule, inadmissible, unless part of res gestæ.—Burns's case, 49 Ala. 370. Nor are they admissible for defense when the homicide is proved by direct evidence.—Rogers's case, 62 Ala. 170. Sometimes admissible in cases of doubt as tending to show the animus of the deceased, and to ascertain who

was the aggressor.—Green's case, 69 Ala. 6; Roberts's case, 68 Ala. 156; Burns's case, 49 Ala. 370; Carroll's case, 23 Ala. 28; Powell's case, 19 Ala. 577. Also admissible to corroborate evidence of communicated threats.—Roberts's case, 68 Ala. 156. When inadmissible.—Carroll's case, 23 Ala. 28. Defendant cannot prove threats made by third persons against deceased.—Alston's case, 63 Ala. 178. **Character of defendant for peace and quiet** admissible in connection with other facts in the case.—Felix's case, 18 Ala. 720; Dupree's case, 33 Ala. 380; Hall's case, 40 Ala. 698; Fields's case, 47 Ala. 603. State cannot introduce evidence of defendant's bad character for peace and quiet until it is put in issue by defendant; but may show general character as affecting credibility where defendant testifies.—Dolan's case, 81 Ala. 11. For the purpose of impeaching, general bad character may be shown without limiting the questions to character for truth and veracity.—Byers's case, 105 Ala. 31. **Character of deceased for violence, turbulence and revengefulness**; when and for what admissible.—Williams's case, 74 Ala. 18; Brown's case, Ib. 42; DeArman's case, 71 Ala. 351; Storey's case, Ib. 329; Roberts's case, 68 Ala. 156; Eiland's case, 52 Ala. 322; Fields's case, 47 Ala. 603; Franklin's case, 29 Ala. 14; Dupree's case, 33 Ala. 380; Pritchett's case, 22 Ala. 39; Quesenberry's case, 3 Stew. & Port. 308. Also held admissible to determine degree of murder.—Fields's case, 47 Ala. 603. Conduct of deceased considered for same purpose.—Green's case, 69 Ala. 6. Prosecution cannot introduce evidence of peaceable character of deceased unless his character is first assailed by defense.—Ben's case, 37 Ala. 103; King's case, 90 Ala. 612. As bearing on promptness of measures of defense.—Karr's case, 100 Ala. 4; Rhea's case, Ib. 122; DeArman's case, 71 Ala. 351. Violent character of deceased no excuse for aggressive action.—Smith's case, 88 Ala. 73; Rhea's case, 100 Ala. 122. Character of deceased immaterial except when there is evidence tending to establish a case of self-defense.—Amos's case, 96 Ala. 120; Jackson's case, 90 Ala. 590; King's case, Ib. 612; Rutledge's case, 88 Ala. 85; Williams's case, 74 Ala. 18. **Definition of violent and bloodthirsty character** which may become a factor in cases where self-defense is pleaded.—Cleveland's case, 86 Ala. 1. **Dying declarations** are admissible only in cases of homicide, when made by the person injured while under a sense of impending death; and are restricted to the res gestæ of the killing and the identification of the parties to it.—Cole's case, 105 Ala. 76; Clark's case, Ib. 91; Johnson's case, 102 Ala. 1; Boulden's case, Ib. 78; Sullivan's case, Ib. 135; Justice's case, 99 Ala. 180; Blackburn's case, 98 Ala. 63; Young's case, 95 Ala. 4; McQueen's case, 94 Ala. 50; Kirby's case, 89 Ala. 63; Hussey's case, 87 Ala. 121; Ward's case, 78 Ala. 441; West's case, 76 Ala. 98; Kilgore's case, 74 Ala. 1; Wills's case, Ib. 21; Brown's case, Ib. 478; Reynolds's case, 68 Ala. 502; Green's case, 66 Ala. 40; Faire's case, 58 Ala. 74; Ex parte Nettles, Ib. 268; May's case, 55 Ala. 39; Walker's case, 52 Ala. 192; Johnson's case, 50 Ala. 456; Johnson's case, 47 Ala. 9; Mose's case, 35 Ala. 421; Ben's case, 37 Ala. 103; McLean's case, 16 Ala. 672; Oliver's case, 17 Ala. 587; Johnson's case, Ib. 618. Declarant need not be in extremis, but must believe himself so.—Johnson's case, 102 Ala. 1; Boulden's case, Ib. 78; Justice's case, 99 Ala. 180. Direct evidence of sense of impending death not required; may be inferred from conduct and circumstances.—Johnson's case, 47 Ala. 9; McLean's case, 16 Ala. 672; Moore's case, 12 Ala. 764; McHugh's case, 31 Ala. 317. Not impaired because family thought deceased would recover.—Sylvester's case, 72 Ala. 201. Not rendered inadmissible because death ensued after a considerable time. Reynolds's case, 68 Ala. 502. Their admission not violative of constitutional right to be confronted by witnesses.—Green's case, 66 Ala. 40. Admissible though made in response to questions asked.—Ingram's case, 67 Ala. 67, citing Moore's case, 12 Ala. 764, and McHugh's case, 31 Ala. 317. Admissible though made while defendant had hope of recovery if reaffirmed after the loss of hope. Johnson's case, 102 Ala. 1. Not admissible to show state of feeling between deceased and accused.—Ben's case, 37 Ala. 103; Mose's case, 35 Ala. 421; Reynolds's case, 68 Ala. 502. Admissible when made by husband against wife.—Moore's case, 12 Ala. 764. Admissible as well for as against accused.—Ib. May be discredited.—Ib.; Sylvester's case, 71 Ala. 17; Green's case, 66 Ala. 40. Inconsistent declarations admissible; credibility for the jury.—Moore's case, 12 Ala. 764; Shell's case, 88 Ala. 14. Not excluded because other evidence exists to same effect.—Reynolds's case, 68 Ala. 502. Some reasons for receiving dying declarations with caution enumerated.—Shell's case, 88 Ala. 14. As to memoranda of declaration and their use in refreshing the memory.—Anderson's case, 79 Ala. 5; Darby's case, 92 Ala. 9. When reduced to writing, must be accounted for.—Boulden's case, 102 Ala. 78; compare Anderson's case and Darby's case, supra. Theory of admission of dying declarations.—Sylvester's case, 71 Ala. 17; Reynold's case, 68 Ala. 502; Green's case, 66 Ala. 40. Held admissible in following cases: Johnson's case, 102 Ala. 1; Boulden's case, Ib. 78; Sullivan's case, Ib. 135; Hammil's case, 90 Ala. 577; Jordan's case, 82 Ala. 1; McQueen's case, 103 Ala. 12; White's case, 111 Ala. 92; Clark's case, 105 Ala. 91;

Hussey's case, 87 Ala. 121; Ward's case, 78 Ala. 441. Held inadmissible in the following: Cole's case, 105 Ala. 76; Justice's case, 99 Ala. 180; Blackburn's case, 98 Ala. 63; Young's case, 95 Ala. 4; Johnson's case, 94 Ala. 35. **Insanity as a defense** must be specially pleaded.—Walker's case, 91 Ala. 76; Maxwell's case, 89 Ala. 150. The issues raised by this plea.—Parsons's case, 81 Ala. 577. Emotional insanity no defense.—Walker's case, 91 Ala. 76; Parsons's case, 81 Ala. 577. When partial insanity excuse for crime.—Gunter's case, 83 Ala. 96. Existence or non-existence a question for the jury.—Parsons's case, 81 Ala. 577. Burden of proof on the defendant.—Maxwell's case, 89 Ala. 150. Parsons's case, 81 Ala. 577; Gunter's case, 83 Ala. 96; compare Henson's case, 112 Ala. 41. Form of verdict when insanity is pleaded.—Maxwell's case, supra. **Drunkenness** of accused, if so excessive as to render him incapable of forming design to take life, may reduce homicide to manslaughter.—Springfield's case, 96 Ala. 81; King's case, 90 Ala. 612; Cleveland's case, 86 Ala. 1; Morrison's case, 84 Ala. 405; Williams's case, 81 Ala. 1; Fouville's case, 91 Ala. 39. But mere drunkenness cannot excuse crime nor enlarge the right of self-defense.—Springfield's case, and authorities, supra. Nor does drunkenness of an assailant deprive one of any right to defend himself.—Askew's case, 94 Ala. 4. **Coverture** is no defense.—Bibb's case, 94 Ala. 31. **Infancy** as a defense. Martin's case, 90 Ala. 602. **Res gestæ**; what declarations of accused and third persons admissible as.—Liles's case, 30 Ala. 24. Declarations of wife of deceased, addressed to him, at the time of killing, "you said that you would kill him," not admissible.—Dean's case, 105 Ala. 21. A difficulty taking place two or three minutes before the fatal one is a part of the res gestæ.—Stitt's case, 91 Ala. 10. Declarations of deceased on leaving home on the day of the killing, as to where he was going, admissible as of the res gestæ.—Martin's case, 77 Ala. 1. Declarations made an hour after the difficulty not part of res gestæ. Stewart's case, 78 Ala. 436. Offer or attempt of accused to lift up deceased two or three minutes after shooting, not admissible.—Goley's case, 87 Ala. 57. Declarations of deceased.—Wesley's case, 52 Ala. 182. Declarations of bystander at previous difficulty, too remote.—Garrett's case, 76 Ala. 18. Proposal by accused to deceased, on day of killing, to go and commit a robbery, not part of.—Birdsong's case, 47 Ala. 68. Declaration by deceased fifteen minutes before killing as to why he had not killed defendant in a previous difficulty, not admissible against accused.—Jackson's case, 52 Ala. 305. Declarations of defendant not connected with the killing.—Redd's case, 68 Ala. 492. Declarations of husband, charged with killing his wife, before the killing, as to trouble between them.—Billingslea's case, 68 Ala. 486. **Admissibility of certain things and circumstances**; possession of goods stolen at time of murder.—Malachi's case, 89 Ala. 134. Tracking accused with dogs.—Hodge's case, 98 Ala. 10. That accused borrowed knife just before killing.—Finch's case, 81 Ala. 41. That accused was talking privately with his brother before killing.—Anderson's case, 79 Ala. 5. Clothing worn by deceased.—Watkins's case, 89 Ala. 82; Holley's case, 75 Ala. 14. Track near scene of killing.—Campbell's case, 23 Ala. 44. Relative size of deceased and slayer.—Wilkins's case, 98 Ala. 1. Description of place of killing.—Green's case, 98 Ala. 14; Green's case, 97 Ala. 59. Gun-wadding.—Hodge's case, 97 Ala. 37. That deceased owned a pistol and her habit of carrying it in a particular way.—Wiley's case, 99 Ala. 146. Diagrams and maps.—Wilkinson's case, 106 Ala. 23. Broken gun near scene.—Ezell's case, 103 Ala. 8. Appearance of prisoner.—Campbell's case, 23 Ala. 44. Correspondence between shoes of accused and tracks near body of deceased. Campbell's case, supra; Young's case, 68 Ala. 569. Letter written by accused found near place of killing.—Aiken's case, 35 Ala. 399. History of prisoner's acts during the day.—Campbell's case, 23 Ala. 44. That accused wiped his knife after the homicide.—Pierson's case, 12 Ala. 149. Fierceness of defendant's dog.—Mattison's case, 55 Ala. 224. **Indictment** in Code form sufficient. Noles's case, 24 Ala. 672; Aiken's case, 35 Ala. 399; Phillips's case, 68 Ala. 469; Billingslea's case, Ib. 486; Redd's case, 68 Ala. 492; s. c., 69 Ala. 255. Sufficient description of means.—Redd's case, 68 Ala. 492. Different means may be alleged in different counts.—Tempe's case, 40 Ala. 350. Indictment charging murder "with knife or other weapon," is bad; but defect must be reached by demurrer, not motion in arrest.—Hornsby's case, 94 Ala. 55. Common-law indictment good for statutory offense.—Flanagan's case, 5 Ala. 477. "Aforethou" for "aforethought" vitiates indictment.—Griffith's case, 90 Ala. 583. **Presumptions**; of death being cause of unskillful treatment.—See Phillips's case, 68 Ala. 469; McDaniel's case, 76 Ala. 1. Shooting by one person and subsequent blow by another hastening death.—Tidwell's case, 70 Ala. 33. Of life when death is a material issue.—Howard's case, 75 Ala. 27. Death must ensue within a year and a day; hastening death by acts.—See Parsons's case, 21 Ala. 300; Morea's case, 2 Ala. 275. When burden of proof not on defendant to negative presumption of malice, etc.—McDaniel's case, 76 Ala. 1. **Jurisdiction** in this state if blow struck here, although death ensues elsewhere. Green's case, 66 Ala. 40. Local jurisdiction of offense committed near county

boundary.—Jackson's case, 90 Ala. 590; McKay's case, 110 Ala. 19. **Variance** between allegations and proof, as to the kind of instrument and manner of using it.—Rodgers's case, 50 Ala. 102; Phillips's case, 68 Ala. 469. As to the part taken by persons jointly charged, what immaterial; conviction for striking blow had under evidence for aiding and abetting.—Brister's case, 26 Ala. 107. **Charge of court,** on different aspects of case; questions for court and jury.—Smith's case, 68 Ala. 424; Bland's case, 75 Ala. 574. A charge "that upon the evidence the defendant is guilty of murder in the first degree or nothing," is a charge on the effect of the evidence, and, if given without request of either side, is erroneous.—Beasley's case, 50 Ala. 149. Also erroneous to charge that "defendant cannot be convicted of murder in the first degree unless he had murder in his heart."—Holley's case, 75 Ala. 14. Court must instruct as to the degrees of murder.—Brown's case, 109 Ala. 70. Court must charge on the law of manslaughter unless it is perfectly clear to the judicial mind that there is no evidence reducing the offense to manslaughter.—Dennis's case, 112 Ala. 64; Compton's case, 110 Ala. 24; Brown's case, 109 Ala. 70; Pierson's case, 99 Ala. 148; DeArman's case, 71 Ala. 351. When failure to instruct jury as to constituents of manslaughter, not error.—De Arman's case, 71 Ala. 351. When charge ignoring self-defense not erroneous.—Taylor's case, 48 Ala. 180; Beasley's case, 50 Ala. 149. When there is some evidence of accidental killing, to charge that malice may be inferred from fact of killing, is erroneous.—Hampton's case, 45 Ala. 82. Also, a charge ignoring suicide, or death from conflict, when these circumstances might exist.—Hall's case, 40 Ala. 698. Also, a charge asserting unreasonable beliefs of accused as reasons why he should be acquitted, where there was no evidence of insanity.—Flanagan's case, 46 Ala. 703. Proper charge as to presumptions of intent and consequences of an act.—McElroy's case, 75 Ala. 9. **Verdict of jury** must ascertain degree of murder, else erroneous.—Brown's case, 109 Ala. 70; Murphy's case, 45 Ala. 32; Hall's case, 40 Ala. 698; Cobia's case, 16 Ala. 781; Johnson's case, 17 Ala. 618; Robertson's case, 42 Ala. 509; Kendall's case, 65 Ala. 492; Dover's case, 75 Ala. 40; Fields's case, 47 Ala. 603; Levison's case, 54 Ala. 520. Yet verdict not ascertaining degree will not authorize discharge on habeas corpus.—Dover's case, 75 Ala. 40. Verdict, though irregular in form, may be sufficient to sustain judgment and sentence.—Lewis's case, 51 Ala. 1; Noles's case, 24 Ala. 672; Bramlett's case, 31 Ala. 376; Harrall's case, 26 Ala. 52; Noles's case, Ib. 31. Verdict must determine character and extent of punishment.—Fields's case, 47 Ala. 603. For murder in second degree, jury may affix any number of years in penitentiary, not less than ten.—Miller's case, 54 Ala. 155. Conviction of lower degree is acquittal of higher.—Fields's case, 52 Ala. 348; Lewis's case, 51 Ala. 1; Nutt's case, 63 Ala. 180; Berry's case, 65 Ala. 117; Smith's case, 68 Ala. 424; Sylvester's case, 72 Ala. 201; De Arman's case, 71 Ala. 351. Yet on a second trial, a conviction may be had for the lower, although proof shows higher degree.—De Arman's case, 71 Ala. 351; Sylvester's case, 72 Ala. 201. **Practice as to plea of former conviction on second trial.**—De Arman's case, 77 Ala. 10; McQueen's case, 103 Ala. 12; Burton's case, Ala. (22 So. 585); Circuit-court rule 31, Vol. I., p. 1200. **Judgment and sentence** cannot be rendered unless degree is found.—Brown's case, 109 Ala. 70; Hall's case, 40 Ala. 698; Cobia's case, 16 Ala. 781; Johnson's case, 17 Ala. 618; Robertson's case, 42 Ala. 509; Murphy's case, 45 Ala. 32. Sentencing two prisoners "during their natural lifetime," equivalent to sentencing each for life.—White's case, 30 Ala. 518. A sentence to death, without specifying the day of execution, supreme court, on affirmance, will fix a day. Russell's case, 33 Ala. 366. **Punishment of manslaughter;** as to whether in penitentiary or at hard labor for the county.—See Evans's case, 109 Ala. 11; Ex parte Goucher, 103 Ala. 305; Brown's case, 102 Ala. 179; Henderson's case, 98 Ala. 35; Zaner's case, 90 Ala. 651; Herrington's case, 87 Ala. 1; Gunter's case, 83 Ala. 96. Irregular verdict in this respect does not operate as an acquittal.—Cases, supra.

4855 (3726) (4297) (3665) (113). **Same; killing in duel; degree.** Killing by fight in single combat, commonly called a duel, with deadly weapons, is murder in the second degree.

4856 (3727) (4298) (3656) (114). **Same; killing in sudden rencounter with concealed weapon.**—When the killing in any sudden rencounter or affray is caused by the assailant by the use of a deadly weapon, which was concealed before the commencement of the fight, his adversary having no deadly weapon drawn, such killing is murder in the second degree, and may, according to the circumstances, be murder in the first degree. (Form 64.)

Does not apply where the deceased was the assailant.—Scales's case, 96 Ala. 69. Assailant means one who assails or assaults, or who is the aggressor. Scales's case, 96 Ala. 69. If there be a killing without previous malice provoked by abusive language or other offense less than an immediate preceding assault, and the insulted party, maddened by the insult, immediately and without reflection, without time to reflect, with no purpose formed or thought of, takes life with a deadly weapon, this reduces the crime to murder in the second degree, but no lower.—Hornsby's case, 94 Ala. 55.

4857 (3728) (4299) (3657) (115). **Same; degree to be found by jury.**—When the jury find the defendant guilty under an indictment for murder, they must ascertain, by their verdict, whether it is murder in the first or second degree; but if the defendant on arraignment confesses his guilt, the court must proceed to determine the degree of the crime, by the verdict of a jury, upon an examination of the testimony, and pass sentence accordingly.

See note to section 4854.

4858 (3729) (4296) (3654) (112). **Same; punishment.**—Any person, who is guilty of murder in the first degree, must, on conviction, suffer death, or imprisonment in the penitentiary for life, at the discretion of the jury; and any person, who is guilty of murder in the second degree, must, on conviction, be imprisoned in the penitentiary for not less than ten years, at the discretion of the jury.

4859 (3730) (4598) (3656) (114). **Same; punishment when committed by convict.**—Any convict sentenced to imprisonment for life, who commits murder in the first degree, while such sentence remains in force against him, must, on conviction, suffer death.

4860 (3731) (4301) (3659) (117). **Manslaughter; different degrees of.**—Manslaughter, by voluntarily depriving a human being of life, is manslaughter in the first degree; and manslaughter committed under any other circumstances is manslaughter in the second degree. (Forms 60, 61.)

See note to section 4854.

4861 (3732) (4302) (1112, 1113) (884, 885). **Same; by engineer of steamboat, and employer.**—In case of the loss of life from the explosion of a boiler, or any apparatus connected therewith, on any steamboat navigating the waters of this state, and the person acting thereon as engineer has not obtained a certificate to act as such engineer, or is acting out of the grade therein specified, or is knowingly employed after the revocation of his certificate, the captain or owner employing such person, and the person so employed or acting are guilty of manslaughter in the first degree.

4862 (3733) (4303) (3660) (118). **Same; punishment.**—Any person who is convicted of manslaughter in the first degree must, at the discretion of the jury, be imprisoned in the penitentiary for not less than one, nor more than ten years, and any person who is convicted of manslaughter in the second degree must, at the discretion of the jury, be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than one year, and may also be fined not more than five hundred dollars.

This section is modified and controlled by section 5412. See note to that section.

4863 (3734) (4300) (3658) (116). **Same; punishment when committed with bowie-knife.**—Any person, who, being armed with a razor, bowie-knife, or other knife of like kind or description, commits manslaughter therewith in a sudden rencounter, must, on conviction, be imprisoned in the penitentiary for not less than five, nor more than ten years.

CHAPTER 159.

IMPEACHMENT OF OFFICERS. 4864–4888.

4864 (4818) (4047). **Who may be impeached; grounds of impeachment.**—The following officers may be impeached and removed from office, to wit: Chancellors, judges of the circuit or city courts, judges of probate courts, solicitors of the circuits, judges of the inferior courts from which an appeal may be taken direct to the supreme court; sheriffs, clerks of the circuit, city, or criminal courts, tax-collectors, tax-assessors, county treasurers, coroners, justices of the peace, notaries public, constables, and all other county officers, and mayors and intendants of incorporated cities and towns in this state, for the following causes, to wit: Willful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith.

Habitual drunkenness discussed and defined.—Savage's case, 89 Ala. 1; Robinson's case, 111 Ala. 482. For neglect of duty, evidence necessary in support thereof.—Tally's case, 102 Ala. 25. For aiding or abetting in homicide, evidence in support thereof.—Ib.

4865 (4819) (4069). **Disqualification a ground of impeachment.** Any of the officers named in the preceding section, who shall be disqualified by law from holding office in this state, may be impeached and removed from office on proceedings instituted and prosecuted in the manner herein provided.

4866 (4820) (4048). **Proceedings in name of state; upon whose information commenced.**—Proceedings under sections 2 and 3 of article seven of the constitution shall be instituted in the name of the State of Alabama, in the nature of an information, by the attorney-general, or circuit solicitor, or upon the information of such other persons as are by this chapter allowed to institute the same; and all such proceedings shall be conducted, and all process shall issue, in the name of the State of Alabama.

Impeachment proceedings are governed by the rules of law and evidence applicable to criminal cases.—Robinson's case, 111 Ala. 482; Tally's case, 102 Ala. 25; Savage's case, 89 Ala. 1; Buckley's case, 54 Ala. 549.

4867 (4821) (4049). **Five resident taxpayers may institute; must give bond.**—Any five resident taxpayers of the division, circuit, district, county, city, or town, for which the officer sought to

be impeached was elected or appointed, may institute proceedings of impeachment, under either of the sections of the constitution above expressed, upon giving bond, with sufficient sureties, payable to the officer sought to be impeached, conditioned to prosecute the impeachment to effect, and, failing therein, to pay all costs that may be incurred; which bond shall be taken and approved by the clerk of the court before which the proceedings are proposed to be instituted.

4868 (4822) (4050). **Of the information.**—Such information shall be addressed to the court before which the trial is to be had, and shall specify, with reasonable certainty, the offense, offenses, or other grounds of impeachment, charged against the officer, within the provisions of section 1 of article seven of the constitution, and shall contain a succinct statement of the facts constituting the matters complained of, and an appropriate prayer for process and relief, and shall be signed by the attorney-general, or solicitor, or by counsel, as the case may be; and when such information is by taxpayers, the names of such taxpayers must be joined as plaintiffs with the state.

Sufficiency of information and report.—Savage's case, 89 Ala. 1.

4869 (4823) (4051). **In supreme court; order, summons, and copy of information; continuances; precedence of cause.**—If such information be filed under section 2 of article seven of the constitution, the supreme court, in term time, or a justice thereof, in vacation, shall make an order, requiring the officer proceeded against to appear at a place, and on a day, which may be either in term time or vacation, to be specified in the order, and answer the information; the clerk of the court shall issue a summons, in which shall be set forth a copy of the order, directed to any sheriff of the State of Alabama, which, together with a copy of the information, shall be served on the defendant; and if the summons is served twenty days before the day specified in the order, the defendant shall answer the information on the day specified, and if the summons is served less than twenty days before the day so specified, the court, in term time, or a justice thereof, in vacation, shall, on the day so specified, make an order setting another day, not exceeding twenty days thereafter, on which the defendant shall answer the information; and another day may be set, and other summons issued as often as may be necessary, and continuances may be granted in the discretion of the court; but the cases herein provided for shall have precedence and priority over all other business in the court.

4870 (4824) (4052). **Proceedings in supreme court.**—In all original proceedings commenced under this chapter in the supreme court, either party shall have compulsory process to compel the attendance of witnesses, to be issued by the clerk of the court, and served by the marshal of the court, or by any sheriff of the state; and such witnesses shall be sworn and examined on the trial in open court; the examination of such witnesses shall be conducted, and defaulting witnesses shall be subject to similar proceedings and pen-

alties, as in criminal cases in the circuit court; but, on the written consent of the defendant, the court, or a justice thereof, in term time or vacation, may appoint one or more examiners, whose duty it shall be, jointly or severally, as may be directed in the order of appointment, to take and certify, by such day as may be fixed in the order of appointment, the evidence against and for the defendant, on the several specifications contained in the information; and the charges shall be tried by the court on such evidence so taken and certified, and such documentary evidence as may be offered; and the court for the trial and impeachment may sit or continue its sessions at any time without reference to the terms as prescribed by law.

4871 (4825) (4053). **Powers of examiners; and by whom their process issued.**—The examiner or examiners so appointed shall have power to issue subpœnas for witnesses, which shall be served by the sheriff of the proper county, or by any special constable appointed by such examiner or examiners, to compel the attendance of witnesses by attachment, and to punish for contempt by fine or imprisonment in the county jail, and to administer oaths to witnesses, and the oaths administered by such examiners shall, in all respects, be deemed and held to be lawful oaths.

4872 (4826) (4054). **Proceedings before examiners.**— Either party shall have the right to appear before the examiner by himself and counsel, and, to this end, shall have five days' notice of the time and place of his sittings; each party shall have compulsory process to compel the attendance of witnesses; and from the rulings of the examiner on any question of the admissibility and legality of evidence offered, either party may reserve an exception, to be decided by the supreme court.

4873 (4827) (4055). **When proceedings in circuit, city or criminal court.**—If such information is filed in the circuit, city or criminal court, the judge of such court shall make an order, either in term time or vacation, requiring the officer proceeded against to appear at a place, and on a day, which may be either in term time or vacation, to be specified in the order, and answer the information; the clerk of the court shall issue a summons, in which shall be set forth a copy of the order, directed to any sheriff of the State of Alabama, and which, together with a copy of the information, shall be served on such defendant; and another day may be set, and other summons issued, as often as may be necessary, and continuances may be granted in the discretion of the court.

4874 (4828) (4056). **In case the sheriff or clerk is impeached.** In all cases in which the sheriff is the party accused, all process relating to the cause shall be executed by the coroner of the county, and, if there is no coroner, then by such other person as may be appointed by the court, or the judge in vacation; and if the accused is the clerk of the court, then the court, or judge thereof, shall appoint a special clerk, who shall be some reliable and responsible person, and who shall perform and discharge all the duties of the office as to this particular case, under the direction of the court, or

the judge thereof, until such case is finally determined, and shall be liable to all the penalties prescribed by law for any misfeasance, or malfeasance, or nonfeasance, in the discharge of the duties of such office.

4875 (4829) (4057). **When cause stands for trial; trial by jury; precedence of cause.**—When the information is filed in the circuit, city, or criminal court, if the summons is served twenty days before the day specified in the order, such cause shall stand for trial on that day, and if the summons is served less than twenty days before the day specified in the order, then the court, in term time, or the judge thereof, in vacation, shall, on the day specified in the order, make an order setting another day on which the defendant shall answer the information, and the cause stand for trial; and the cause, if in term time, shall have precedence and priority over all other business in such court; and, whether in term time or vacation, shall be proceeded with in all respects as civil actions at law are conducted, with the right to either party to except to the rulings of the court, and to reserve such exceptions as in civil causes; and the defendant shall be entitled to a trial by jury on any issue of fact, whenever he demands the same; and if the trial is had in vacation, upon a demand for a jury, the judge of the court shall make an order requiring a jury to be summoned by the sheriff, in the manner provided for by law for summoning special juries in the county of the trial.

4876 (4830) (4063). **Time of trial.**—When such proceedings are instituted in a circuit, city, or criminal court, and the day specified in the order of the judge on which the defendant is to appear and answer is in vacation, a special term of such court shall be held on such day without further notice or order, and special terms of such courts shall be held on such day or days in vacation, which may thereafter be set, and to which such cause shall be continued, without further notice or order, unless a regular term of such court shall intervene, when the cause shall stand for trial at such regular term. Whenever any such cause stands for trial at a regular term of such court, and is not tried for any cause during such term, it shall not be continued to the next regular term, but the court shall make an order fixing a day in vacation for the trial of the cause, and for a special term of the court to be held on that day, at which special term it shall be tried, unless continued for good cause. At no special term of the court, held under the provisions of this section, shall any other business be transacted.

4877 (4831) (4058). **Verification of information when filed by taxpayers; costs.**—When the proceedings in impeachment are instituted by taxpayers, the information must be verified by the petitioners, or any one of them. The costs shall be given against the unsuccessful party, as in other cases, to be collected by execution.

4878 (4832) (4059). **Duties and liabilities of sheriffs, etc.; fees of clerk, etc.**—The sheriff, coroner, or constable, to whom process is issued under the provisions of this chapter, shall perform all the duties as sheriffs are required to perform them; shall be liable to all the

penalties to which sheriffs, in similar cases, are liable; and shall be entitled to the same fees as sheriffs are entitled to for similar services. The examiners shall be entitled to such compensation as the supreme court may determine as fair equivalent for the services performed; and all such fees and compensation shall be taxed in the bill of costs; but no costs shall be adjudged against the state, nor against the successful petitioners on a return of "no property found" against the defendant, but may be paid out of the state treasury in all cases when the governor thinks it right to pay the same.

4879. Compensation of witnesses; how state witnesses before supreme court paid.—Witnesses in impeachment cases are entitled to the same fees and compensation as witnesses in civil cases in the circuit court, to be certified in the same manner and taxed and collected as costs. The examiner must file with his return a statement showing the names of witnesses examined by each party and the fees and compensation to which they are entitled. When the proceeding is upon the information of the attorney-general, the fees of witnesses on the part of the state, attending before the supreme court, must be paid out of the state treasury on warrant of the auditor, drawn upon the certificate of the clerk showing the fees and compensation to which the witness is entitled and the approval of the attorney-general indorsed thereon; but the same must be taxed as costs, and if collected of the defendant must be, by the clerk, paid into the state treasury.

4880 (4833) (4060). **Final record to be made.**—The clerk, or if he is the accused, the person acting as clerk, of the court in which the trial is had, shall make and preserve a final record of the proceedings, in all respects as clerks of the circuit courts are required to do of trials had therein; and all laws applicable thereto are made applicable to final records and proceedings under this chapter.

4881 (4834) (4061). **Appeals to supreme court.**—From any final judgment or decision rendered by any circuit, city, or criminal court, in proceedings under this chapter, an appeal shall lie to the supreme court in favor of the unsuccessful party; and such appeal must be taken within ten days after judgment rendered, and shall be taken to the first day to which such appeal can be made returnable, and not afterwards; and notice of appeals shall be given as in other cases. Such appeal shall have precedence and priority of all other appeals.

4882 (4835) (4062). **Security for costs.**—If the appeal be taken by the state in cases instituted in its name, by the attorney-general or solicitor, no security for costs shall be required. In all other cases, security for costs shall be required as in appeals to the supreme court in civil causes; and such appeal shall not suspend the judgment of conviction.

4883 (4836) (4064). **Amendments allowed; to what facts witnesses may testify.**—In all cases instituted under the provisions of this chapter, any and all amendments, necessary to a trial of the cause upon its merits, shall be allowed; and witnesses may testify to any facts or circumstances within their knowledge, which may

show or tend to show that the accused has been guilty of any of the offenses or delinquencies charged against him, or is incompetent, as the case may be; and, in like manner, the accused must have a similar right to introduce like evidence to show that he has not been guilty of the offenses or delinquencies charged against him, or that he is not incompetent, as the case may be.

4884 (4837) (4065). **Duty of clerks in certifying vacancy in office on conviction.**—It shall be the duty of the clerk of the supreme court, in all cases, when final judgment of conviction is rendered in that court, on appeal or otherwise, forthwith to certify the vacancy thus created to the appointing power, with a copy of the judgment; and, in like manner, the clerk of the circuit, city, or criminal court shall certify to the appointing power any final judgment of conviction rendered in such court, from which no appeal is taken.

4885 (4838) (4066). **Extent of judgment; liability of accused to indictment.**—No statute of limitations shall be valid as a bar to any of the proceedings provided for by this chapter; but the penalties in cases arising under the provisions of this chapter shall not extend beyond the removal from office, and the disqualification from holding office under the authority of this state for the term for which the accused was elected or appointed; but the accused shall be liable to indictment, trial and punishment, as prescribed by law.

4886 (4839) (4067). **Duty of grand jury; when report of grand jury transmitted to attorney-general.**—It shall be the duty of every grand jury to investigate and make diligent inquiry concerning any alleged misconduct or incompetency of any public officer in the county, which may be brought to their notice; and if, on such investigation and inquiry, they find that such officer, for any cause mentioned in this chapter, ought to be removed from office, they shall so report to the court, setting forth the facts, which report shall be entered on the minutes of the court. If the officer so reported against is one of those included in section 2, article seven of the constitution, the clerk of the court shall transmit a certified copy of such report to the attorney-general. If the officer so reported against is the presiding judge of the court, the report must not be made to the court, or entered on the minutes; and, in such cases, the report of the grand jury must be signed by the foreman, and countersigned by the solicitor of the circuit, who must transmit the same to the attorney-general.

Sufficiency of report of grand jury.—Seawell's case, 64 Ala. 225; Savage's case, 89 Ala. 1. That the report was not made by twelve grand jurors, or was not founded on legal evidence, cannot be raised for the first time in the supreme court.—Savage's case, 89 Ala. 1.

4887 (4840) (4068). **Duty of attorney-general and solicitors.** It shall be the duty of the attorney-general to institute proceedings under this chapter, and prosecute the same against any officer included in section 2, article seven of the constitution, when the supreme court shall so order, or when the governor shall, in writing, direct the same, or when it appears from the report of any grand jury that any such officer ought to be removed from office, for any

As amended Feb. 18, 1893, p. 677.

cause mentioned in the first section of this chapter. And it shall be the duty of the solicitor of the circuit to institute proceedings under this chapter, and prosecute the same against any officer included in section 3, article seven of the constitution, when the circuit, city, or criminal court of the county shall so order, or when the governor, in writing, shall direct the same, or whenever it appears from the report of the grand jury that any such officer ought to be removed from office for any cause mentioned in the first section of this chapter.

4888 (4841) (4070). **Proceedings when defendant has removed, absconded, or secreted himself.**—If, in any case of proceedings for impeachment or removal from office under this chapter, the defendant has removed, absconded, or secreted himself, so that the summons cannot be served on him personally, the sheriff, or other officer to whom the summons is issued, shall serve the same by leaving a copy thereof at the office of the defendant, if known, or at his last place of residence; and the sheriff shall forthwith publish in some newspaper, published in the county, or if no newspaper is published in the county, then in the newspaper published nearest thereto, a copy of the summons and notice to the defendant where a copy thereof had been left for him. The sheriff shall make return of the summons as in other cases, stating the facts; and such service shall be as valid, to all intents and purposes, as personal service on the defendant; and if the defendant fails to appear pursuant to the summons, whether served personally, or as provided by this section, the court shall cause the plea of not guilty to be entered for him, and the trial shall proceed as in other cases.

CHAPTER 160.

INCEST. 4889, 4890.

4889 (4013) (4187) (3601) (60). **By intermarriage or sexual intercourse.**—If any man and woman, being within the degrees of consanguinity or relationship within which marriages are declared by law to be incestuous and void, and knowing of such consanguinity or relationship, intermarry, or have sexual intercourse together, or live together in adultery, each of them must, on conviction, be imprisoned in the penitentiary for not less than one, nor more than seven years. (Form 54.)

The man may be guilty though the facts make a case of rape.—Smith's case, 108 Ala. 1. If crime committed by force, victim not guilty.—Ib. Natural children are within the statute.—Morgan's case, 11 Ala. 289; Baker's case, 30 Ala. 521. Code form of indictment sufficient.—Baker's case, 30 Ala. 521. Defendant's confession of relationship admissible against him.—Morgan's case, 11 Ala. 289.

4890 (4014) (2673). **On conviction, the marriage annulled.**—On conviction for incest for marrying within the prohibited degrees, the court must declare such marriage null and void, and may require the parties to enter into a recognizance, with sufficient sureties, that they will not thereafter cohabit.

CHAPTER 161.

INDICTMENTS.

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ARTICLE 1.

DEFINITION, FORM AND CONTENTS.

4891 (3702) (4781) (4108) (558). **Indictable offenses.**—All felonies and all misdemeanors, originally prosecuted in the circuit or city court, are indictable offenses.

4892 (4364) (4782, 4783) (4109, 4110) (559, 560). **Definition; not distinguished from presentment.**—An indictment is an accusation in writing presented by the grand jury of the county, charging a person with an indictable offense; the distinction between indictments and presentments is abolished.

Mose's case, 35 Ala. 425.

4893 (4365) (4784) (4111) (561). **Caption and conclusion.**—An indictment must contain, in the caption or body thereof, the name of the state, county, court and term, in and at which it is preferred, and must conclude "against the peace and dignity of the State of Alabama."

The nature, office and materiality of the caption.—Goodloe's case, 60 Ala. 93; Overton's case, Ib. 73; Harrington's case, 36 Ala. 236; Reeves's case, 20 Ala. 33; Murphy's case, 9 Port. 487; Rose's case, Minor, 28. Must be sufficiently shown by the record.—Goodloe's case, supra. Looked to in aid of indictment as part of record.—Morgan's case, 19 Ala. 556; Lawson's case, 20 Ala. 65; Noles's case, 24 Ala. 672; Perkins's case, 50 Ala. 154. Applies to each count, and is not struck out, though first count quashed.—Pairo's case, 49 Ala. 25. Immaterial if words "city court," instead of "city court of Selma," are used.—Harrison's case, 55 Ala. 239; Bonner's case, Ib. 242. If it states the name of the county, omission of word "county" from body of indictment is not material defect.—Caldwell's case, 49 Ala. 34. Nor the substitution of the word "court" for "county."—Perkins's case, 50 Ala. 154. And the same as to the term at which the indictment was found.—Quinn's case, 49 Ala. 353. Not necessary that each count should conclude "against the peace and dignity of the State of Alabama," if the indictment so concludes.—McGuire's case, 37 Ala. 161. And it is not demurrable for concluding "against the peace and dignity of the State of Alabama" (as in the statute), instead of "against the peace and dignity of the state" (as in the constitution, article six, section 28).—Washington's case, 53 Ala. 29. But if the "State of Alabama" is mentioned in the caption, the conclusion may be "against," etc., of "the state," without adding "of Alabama."—Atwell's case, 63 Ala. 61.

4894 (4366) (4824) (4141) (591). **Forms in Code sufficient.**—The manner of stating the act constituting the offense, as set forth in

the forms given in article seven of this chapter, is sufficient in all cases in which the forms there given are applicable; in other cases, forms may be used as near similar as the nature of the case and the rules prescribed in this chapter will permit.

When the legislature declares what form of indictment is sufficient, the courts will uphold it, though matters of substance are omitted.—Bailey's case, 99 Ala. 143; Smith's case, 63 Ala. 55; McCullough's case, 63 Ala. 75; Wilson's case, 61 Ala. 151; Weed's case, 55 Ala. 13; Watt's case, 97 Ala. 72; Lang's case, 97 Ala. 41; Walker's case, 96 Ala. 53; Thomas's case, 91 Ala. 34; Smith's case, 103 Ala. 57. The statutes have changed the common-law rule, "reducing indictments rather to a statement of legal conclusions than of facts."—Drake's case, 60 Ala. 62; Jackson's case, 91 Ala. 55. Indictment for *attempt*, pursuing the form prescribed for the committed act, sufficient.—Jackson's case, 91 Ala. 55. Analogous forms may be used.—Brantley's case, 91 Ala. 47, 51; Allen's case, 79 Ala. 34, 37.

4895 (4367) (4815) (4142) (592). **Formal defects not fatal.**—An indictment must not be held insufficient, nor can the trial, judgment, or other proceedings thereon, be affected by reason of any defect or imperfection in any matter of form which does not prejudice the substantial rights of the defendant on the trial.

Indictment for larceny of "the property of A. B.," omission of word "of" does not render indictment defective.—Abernathy's case, 78 Ala. 411.

4896 (4368) (4785) (4112) (562). **Statement of offense.**—The indictment must state the facts constituting the offense in ordinary and concise language, without prolixity or repetition, in such a manner as to enable a person of common understanding to know what is intended, and with that degree of certainty which will enable the court, on conviction, to pronounce the proper judgment; and in no case are the words "force and arms" or "contrary to the form of the statute" necessary.

Applies only to statutory offenses.—Goree's case, 71 Ala. 9. In common-law misdemeanors, made felonies by statute, not necessary to allege that the act was feloniously done.—Beasley's case, 18 Ala. 535; Butler's case, 22 Ala. 43. Where offense consists of repetition or continuation of acts, they need not be set out.—Sterne's case, 20 Ala. 43; Lawson's case, Ib. 65. Exceptions created by a proviso to an act need not be negatived.—Carson's case, 69 Ala. 235. See also Grattan's case, 71 Ala. 344; Clark's case, 19 Ala. 552. Must charge acts, not specially defined, in plain, unambiguous, not slang or technical language. Daniel's case, 61 Ala. 4. Every fact and circumstance, not necessary ingredient of offense, may be rejected as surplusage.—Stedman's case, 7 Port. 495; McGehee's case, 52 Ala. 224. Or words uselessly repeated or superadded.—Lodano's case, 25 Ala. 64; McGehee's case, supra.

4897 (4369) (4801) (4128) (578). **Construction of words used.** The words used in an indictment must be construed in their usual acceptation in common language, except words and phrases defined by law, which must be construed according to their legal meaning.

Bad punctuation does not vitiate an indictment.—Ward's case, 50 Ala. 120. Nor use of character "&" instead of word "*and*."—Pickens's case, 58 Ala. 364. Nor use of word "*was*" instead of "*were*."—Pond's case, 55 Ala. 196. Use of figures instead of letters permissible sometimes, but a bad practice.—Raiford's case, 7 Port. 101; Diggs's case, 49 Ala. 311. The omission of the last letter of the word "*gold*," making it "*gol*," in describing money stolen, is mere misprision. Grant's case, 55 Ala. 201. Use of word "*charged*" instead of "*charge*," when not fatal.—Brazier's case, 44 Ala. 387. Use of words "*maice* aforethought," instead of "*malice* aforethought," vitiates as to intended charge.—Wood's case, 50 Ala. 144. Averment of "*Buter*" for "*Butler*," in describing the county, corrected by caption.—Reeves's case, 20 Ala. 33. The word "delivered" is not equivalent to claim of ownership.—Jenkins's case, 97 Ala. 66. Indictment charging larceny of sack *full* of corn, the word "full" is surplusage.—Newsum's case, 107 Ala. 133. "Physician" means same thing as "licensed physician."

Dean's case, 100 Ala. 102. Two "bales" is synonymous with two "bags" of cotton. Peter's case, 100 Ala. 10. The word "aforethou" is not equivalent to "aforethought."—Griffith's case, 90 Ala. 583. As to spelling, see Watkins's case, 89 Ala. 82. "Female" means same thing as "woman."—Myer's case, 84 Ala. 11. Indictment charging larceny of "gold watch" is supported by proof that watch was commonly called "gold watch," though not pronounced so by jewelers. Pfister's case, 84 Ala. 432. Omission of the word "of" in an indictment is a mere clerical misprision.—Abernathy's case, 78 Ala. 411.

4898 (4370) (4792) (4119) (569). **Statute words not necessary; what words sufficient.**—Words used in a statute to define an offense need not be strictly pursued in the indictment; it is sufficient to use other words conveying the same meaning.

Indictment for offense created by statute must conform substantially to description in statute.—Bryan's case, 45 Ala. 86; Skains's case, 21 Ala. 218; Pettibone's case, 19 Ala. 586; Eubanks's case, 17 Ala. 181. Hence, Code form of indictment insufficient, if it fails to describe offense, etc.—Danner's case, 54 Ala. 127; Smith's case, 63 Ala. 55; and cases above cited in this note. Held sufficient generally to follow language of statute.—Mason's case, 42 Ala. 543; Johnson's case, 32 Ala. 583; Bush's case, 18 Ala. 415; Raiford's case, 7 Port. 101; Plunket's case, 2 Stew. 101; Lodano's case, 25 Ala. 64; Smith's case, 22 Ala. 54; Stedman's case, 7 Port. 495; Clark's case, 19 Ala. 552; Beasley's case, 18 Ala. 535; Batre's case, Ib. 119; Eubanks's case, 17 Ala. 181; Mahan's case, 2 Ala. 340; Click's case, Ib. 26; Duncan's case, 9 Port. 260; Briley's case, 8 Port. 472; Smith's case, 63 Ala. 55. If statute words are not employed, the words used must have as full signification.—Sparrenberger's case, 53 Ala. 481; Ben's case, 22 Ala. 9; Ward's case, Ib. 16; Bullock's case, 13 Ala. 413; Worrell's case, 12 Ala. 732. Charging words in addition to those in statute, thereby taking the offense out of statute, vitiates indictment.—Mahan's case, 2 Ala. 340. Insufficient to pursue words of statute which merely designates without describing offense.—Anthony's case, 29 Ala. 27; Beasley's case, 18 Ala. 535; Turnipseed's case, 6 Ala. 664. See also Williams's case, 15 Ala. 259. When indictment in language of statute insufficient.—Grattan's case, 71 Ala. 344; Danner's case, 54 Ala. 127. When must conform to letter or substance of statute creating particular local offense.—Camp's case, 27 Ala. 54. Where statute prescribes different punishment for different individuals indictment must specify the class within which defendant is amenable.—Hirschfelder's case, 18 Ala. 112.

4899 (4371) (4793) (4120) (570). **Offense described as at common law; punishment.**—In an indictment for an offense which was indictable at common law, the offense may be charged or described as at common law, and the defendant, if convicted, must receive the punishment prescribed by the statute.

Indictment good at common law sufficient under the statute.—Sparks's case, 59 Ala. 82; Diggs's case, 49 Ala. 311. Formerly indictment under the statute merely punishing common-law offense, required to be found as at common law.—Absence's case, 4 Port. 397; Stedman's case, 7 Port. 495. Indictment for keeping disorderly house examined, and held sufficient under common law. Cahn's case, 110 Ala. 56.

4900 (4372) (4794) (4121) (571). **Special and general terms in statutory definition.**—When a statute creating or defining an offense uses special or particular terms, an indictment on it may use the general term which, in common language, embraces the special term.

For act done by acts or means other than those particularized, such acts or means must be specified more particularly than by general description in statute.—Danner's case, 54 Ala. 127. They must be described in plain and proper language, not by slang or technical words.—Daniel's case, 61 Ala. 4. When indictment charging general term insufficient.—Horton's case, 53 Ala. 488; Johnson's case, 32 Ala. 583; Bush's case, 18 Ala. 415; Raiford's case, 7 Port. 101; Plunket's case, 2 Stew. 101.

4901 (4373) (4788) (4115) (565). **Statement of time.**—It is not necessary to state the precise time at which the offense was committed; but it may be alleged to have been committed on any day

before the finding of the indictment, or generally before the finding of the indictment, unless time is a material ingredient of the offense.

Specific time need not be averred, unless a material ingredient of the offense.—Molett's case, 33 Ala. 408; Doyle's case, 49 Ala. 28. Sufficient to charge that offense was committed "before the finding of the indictment."—Thompson's case, 25 Ala. 41; Molett's case, 33 Ala. 408. And must be proved that the offense was committed before indictment found; of which a reasonable doubt authorizes acquittal.—Armistead's case, 43 Ala. 340. See McGuire's case, 37 Ala. 161. If alleged under videlicet, need not be proved as laid.—McDade's case, 20 Ala. 81. Need not allege that offense was committed after passage of a recent act alleged to be violated.—Harris's case, 60 Ala. 50. See also Adams's case, Ib. 52. As to allegation and variance in limit of time allowed in taking out license.—Henback's case, 53 Ala. 523. Time of offense as a necessary averment at common law.—Beckwith's case, 1 Stew. 318; Lassley's case, 7 Port. 526; Shelton's case, 1 Stew. & Port. 208; Roberts's case, 19 Ala. 526. Indictment for an offense, which has been changed by statute from misdemeanor to felony, must show whether offense was committed before or after the change.—Bibb's case, 83 Ala. 84.

4902 (4374) (4787) (4114) (564). **Statement and proof of venue.** It is not necessary to allege where the offense was committed; but it must be proved, on the trial, to have been committed within the jurisdiction of the county in which the indictment is preferred.

Legislature has the power to dispense with necessity of averring venue. Noles's case, 24 Ala. 672. Averment of county in margin.—Reeves's case, 20 Ala. 33. Venue must always be proved.—Tidwell's case, 70 Ala. 33; Salomon's case, 27 Ala. 27; Brown's case, Ib. 47; Huffman's case, 28 Ala. 48; Spaight's case, 29 Ala. 32; Farrall's case, 32 Ala. 557; Green's case, 41 Ala. 419; Frank's case, 40 Ala. 9; Clark's case, 46 Ala. 309; Sparks's case, 59 Ala. 82; Cawthorn's case, 63 Ala. 157. May be proved after argument begun.—Pond's case, 55 Ala. 196. Proof of county boundaries; when a question of fact and when of law. Tidwell's case, 70 Ala. 33. Failure to prove venue, taken advantage of by general charge to acquit.—Childs's case, 55 Ala. 28; Williams's case, 54 Ala. 131; Clark's case, 46 Ala. 307. Or demurrer to evidence sustained, if no proof of venue.—Martin's case, 62 Ala. 240. Such proof must appear by bill of exceptions, if purporting to set out all the evidence, on appeal.—Riddle's case, 49 Ala. 389; Walker's case, 52 Ala. 192; Williams's case, 54 Ala. 132; Sampson's case, Ib. 241; Ellsberry's case, 52 Ala. 8. Charges ignoring proof of venue erroneous.—Henry's case, 36 Ala. 268; David's case, 40 Ala. 69; Clark's case, 46 Ala. 307; Gooden's case, 55 Ala. 178; Bain's case, 61 Ala. 75. But see Cunningham's case, 73 Ala. 51. But supreme court will not interfere in the absence of instructions given or refused, and when no exception was reserved. Hubbard's case, 72 Ala. 169; Huggins's case, 41 Ala. 393; Ellsberry's case, 52 Ala. 8; West's case, 76 Ala. 98. Indictment for violating local prohibition law must show offense was committed within the prohibited territory.—Robertson's case, 100 Ala. 123. Statement of state and county in margin equivalent to an averment that the offense was committed within the body of that county. Wesley's case, 52 Ala. 182, 188; Toole's case, 89 Ala. 133.

4903 (4375) (4795) (4122) (572). **Description of public place.** When, to constitute the offense, an act must be done in a public place, and such public place is not more particularly defined in the statute, it is sufficient to allege that the act was done "in a public place" generally.

4904 (4376) (4786) (4113) (563). **Name or description of defendant when unknown.**—The indictment must be certain as to the person charged; but when his name is unknown to the grand jury, it may be so alleged without further identification.

Identity of persons presumed from identity of names, in absence of evidence that same name is borne by another in the community.—Garrett's case, 76 Ala. 18. Evidence of identity.—Ib. Statute is mere affirmation of common law.—Washington's case, 68 Ala. 85. Either Christian or surname may be alleged under alias.—Lee's case, 55 Ala. 259; Haley's case, 63 Ala. 89. And may be identified by either name.—Evans's case, 62 Ala. 6. Insertion or omission of middle name immaterial.—Edmundson's case, 17 Ala. 179. See also Diggs's case, 49 Ala. 311; Rooks's case, 83 Ala. 79. And so of a mistake in the middle

name, if alleged.—Pace's case, 69 Ala. 231. Not sufficient to allege defendant's name by initials, without additional averments.—Gerrish's case, 53 Ala. 476; Winter's case, 90 Ala. 637. When not uncertain, as to whether defendants charged individually, or as private corporation.—Barnett's case, 54 Ala. 579. Mistake in spelling, if pronunciation unchanged, is immaterial variance under doctrine of idem sonans.—Page's case, 61 Ala. 17. The following held **idem sonans**: "*Booth*" and "*Boothe*" (Jackson's case, 74 Ala. 26); "*Louis*" and "*Lewis*" (Block's case, 66 Ala. 493); "*Edmundson*" and *Edmindson*" (Edmundson's case, 17 Ala. 179); "*Burdet*" and "*Boudet*," "*Boredet*" or "*Bouredet*" (Aaron's case, 37 Ala. 106). The following held **not idem sonans**: "*Mincher*" and "*Minchen*" (Adams's case, 67 Ala. 87); "*Zachary*" and "*Zacharia*" (Lawrence's case, 59 Ala. 61); "*Mulette*" and "*Merlette*" (Merlette's case, 100 Ala. 42); "*Munkers*" and "*Muncus*" (Munkers's case, 87 Ala. 94). When idem sonans a question for the jury.—Underwood's case, 72 Ala. 220; Lawrence's case, 59 Ala. 61. The Christian names of third persons, or persons only collaterally concerned, may be alleged by initials, if it appears on the trial to be the person meant.—Franklin's case, 52 Ala. 414; Gerrish's case, 53 Ala. 476; Haley's case, 63 Ala. 83; Thompson's case, 48 Ala. 165. But the policy of this statute should be extended to description of third persons with same certainty as defendants.—Morningstar's case, 52 Ala. 405. Cases showing material and immaterial variance in names or description of third persons.—Jacob's case, 61 Ala. 448; Hinds's case, 55 Ala. 145; Brown's case, 47 Ala. 47; Owen's case, 48 Ala. 328. Grand juries and solicitors in all cases should try and ascertain true names, and, if unknown, may be so alleged without further description.—Morningstar's case, 52 Ala. 405; Gerrish's case, 53 Ala. 470; Cheek's case, 38 Ala. 227. Also may allege Christian name, or surname, as unknown.—Bryant's case, 36 Ala. 270; Skinner's case, 30 Ala. 524. Yet proof that name was known by grand jury, or could have been ascertained by due diligence, authorizes acquittal as to person so alleged, but not if name known since indictment. Cheek's case, supra. But see as to unknown facts.—Duvall's case, 63 Ala. 12. Indictment must not pretend to give a name and also aver (in same count) name to be unknown.—Jones's case, 63 Ala. 27. But this rule held not to apply when no name is alleged, but initials only are averred.—Gerrish's case, 53 Ala. 470. An indictment which describes the defendant as "W. P. O'Brien, whose Christian name is to the grand jury unknown" is sufficient.—O'Brien's case, 91 Ala. 25. If indictment states only initials of Christian name and alleges it to be unknown and proof shows it was known, there can be no conviction.—Winter's case, 90 Ala. 637. Indictment against "Mat" Taylor is sufficient, without allegation "otherwise unknown," and if alleged it is surplusage. Taylor's case, 100 Ala. 68. Indictment against "Babe" Wells is sufficient also, without allegation of "otherwise unknown."—Wells's case, 88 Ala. 239. Indictment against Robert Noblin, alias Robert Tate, is good, and plea that name was Robert Tate and that he had no alias is bad.—Noblin's case, 100 Ala. 13. "*Rooks*" and "*Rux*" are so nearly idem sonans that it will not support plea in abatement.—Rooks's case, 83 Ala. 79. There is a material variance between "*Tarpley*" and "*Tapley.*"—Tarpley's case, 79 Ala. 271. There is no material variance between "*Donnelly*" and "*Donly.*"—Donnelly's case, 78 Ala. 453.

4905 (4377) (4789) (4116) (566). **Facts unknown to jury; so alleged.**—Any fact which is unknown to the grand jury, and which is not a material ingredient of the offense, may be so charged in the indictment.

Such averment is sufficient if the fact was actually unknown, even if it could have been ascertained by reasonable diligence.—Duvall's case, 63 Ala. 12. Prosecution not bound to prove fact was unknown.—Childress's case, 86 Ala. 77. An indictment which charges the murder of a man, whose name is to the grand jury unknown, is sufficient, and the allegation that the deceased "was supposed to be named C. Mehan," is surplusage.—Reese's case, 90 Ala. 624. When the indictment is sufficient without the allegation that a fact is otherwise unknown, such allegation is surplusage.—Carden's case, 89 Ala. 130. When the indictment alleges a fact or name to be unknown to the grand jury, and the evidence shows that it was known to that body, the variance is fatal. Winter's case, 90 Ala. 637; Wells's case, 88 Ala. 239; Duvall's case, 63 Ala. 13. An indictment for the sale of mortgaged property, must allege the name of the holder of the mortgage, and cannot aver it is unknown.—Hill's case, 78 Ala. 1. An indictment against W. P. O'Brien, whose Christian name is otherwise unknown, is sufficient.—O'Brien's case, 91 Ala. 25.

4906 (4378) (4790) (4117) (567). **Means unknown; so alleged.** When the means by which the offense was committed are unknown

to the grand jury, and do not enter into the essence of the offense, the indictment may allege that they are unknown to the jury.

4907 (4379) (4791) (4118) (568). **Legal presumptions, and matters judicially known.**—Presumptions of law and matters of which judicial notice is taken, need not be stated.

Refers only to presumptions of law which forbid all dispute; not to disputable presumptions which may be overcome by proof.—Henry's case, 33 Ala. 389. See McDaniel's case, 76 Ala. 1; Cary's case, Ib. 78. Courts take judicial notice of public officers, and their official acts.—Beggs's case, 55 Ala. 108. Charters of municipal corporations and special statutes conferring on them special powers.—Mayor v. Wetumpka Wharf Co., 63 Ala. 611; City Council v. Hughes, 65 Ala. 201. But not of the ordinances of municipal corporations.—Furham v. Mayor, 54 Ala. 263. Of a statute which, though local in its nature, extends to all persons who may come within territory described, and is therefore public statute.—Carson's case, 69 Ala. 235. But not of a private act (as turnpike charter).—Moore's case, 26 Ala. 88. Of notaries with powers of justice and other commissioned officers.—Coleman's case, 63 Ala. 93. That "lager-beer" is a "malt liquor."—Watson's case, 55 Ala. 158. Of the meaning of "malt liquor" as used in statutes.—Adler's case, 55 Ala. 16. Of the value of U. S. currency and treasury notes.—Grant's case, 55 Ala. 201; Duvall's case, 63 Ala. 12. Of journals of two houses of general assembly.—Moody's case, 48 Ala. 115. Of grand jury and terms of filing indictments.—Overton's case, 60 Ala. 74. Of the names of counties of this state.—Ib.; Reeves's case, 20 Ala. 33. Of things generally known.—S. & N. R. Co.'v. Pilgreen, 62 Ala. 305. Also of "Webster's Unabridged Dictionary" as standard authority for meaning of English words.—Adler's case, 55 Ala. 16. But not of laws of sister state.—Forsythe v. Preer, 62 Ala. 443. As to other matters of which courts take judicial notice, see Sprowl v. Lawrence, 33 Ala. 674; Allman v. Owen, 31 Ala. 167; McDaniel's case, 76 Ala. 1; Cary's case, Ib. 78.

4908 (4380) (4799) (4126) (576). **Averment of intent to injure or defraud.**—When an intent to injure or defraud is necessary to constitute the offense, it is sufficient to allege an intent to injure or defraud generally, without naming the particular person, corporation, or government intended to be injured or defrauded.

Under general averment of intent to defraud, the state may prove the particular person intended to be defrauded.—Williams's case, 61 Ala. 33; Mack's case, 63 Ala. 138; Headley's case, 106 Ala. 109.

4909 (4381) (4800) (4127) (577). **Averment of ownership of property.**—When any property, upon or in relation to which the offense was committed, belongs to several partners or owners, it is sufficient to allege the ownership to be in any one or more of such partners or owners.

Williams's case, 67 Ala. 183; White's case, 72 Ala. 195; Bass's case, 63 Ala. 108; Brown's case, 79 Ala. 51.

4910 (4382) (4812) (4138) (588). **Description of animal in offense committed concerning same.**—In an indictment for the larceny of any animal, or for any other public offense committed in reference to any animal, it is sufficient to describe the animal by such name as, in the common understanding, embraces it, without designating its sex.

See note to section 5049.

ARTICLE 2.

ALTERNATIVE AVERMENTS, AND JOINDER OF OFFENSES.

4911 (4383) (4796) (4123) (573). **Statements of means or intents in alternative.**—When the offense may be committed by dif-

ferent means, or with different intents, such means or intents may be alleged in the same count in the alternative.

Indictment charging the appropriation of specified sums, "or other large sums of money," is not within either of the three sections of this article, as showing different means, intents and results, or offenses.—Noble's case, 59 Ala. 78. These statutes change the common-law rule, and are intended to prevent a multiplicity of counts.—Sparrenberger's case, 53 Ala. 481; Noble's case, supra; Horton's case, 53 Ala. 488; Thomas's case, 111 Ala. 51. In offenses of same character which may be committed with different intent, the intent may be alleged alternately in same count, or in different counts.—Carleton's case, 100 Ala. 130. Assault with a knife and simple assault may be alleged in the alternative.—Bonner's case, 97 Ala. 47. Each alternative averment must state a complete offense.—Hornsby's case, 94 Ala. 55; May's case, 89 Ala. 37. Indictment alleging defendant killed deceased by stabbing him with a knife, *or other weapon*, is bad on demurrer, but not after judgment.—Hornsby's case, 94 Ala. 55. Indictment for murder is sufficient which alleges alternatively that deceased was killed by striking him in the head with some hard substance to the grand jury unknown, or by choking him with a piece of fuse or cord.—Wilson's case, 84 Ala. 426. Indictment for burglary may allege in one count that the act was committed with intent to steal or to commit rape.—Dismuke's case, 83 Ala. 287.

4912 (4384) (4797) (4124) (574). **Same as to different results.** When an act is criminal, if producing different results, such results may be charged in the same count in the alternative.

These statutes not applicable where particular acts or means are followed by more comprehensive generic term, which is immediately preceded by words "or other."—Johnson's case, 32 Ala. 583; and other cases cited in note to section 4417. An averment as "justice of peace or notary public" allowable. Murphy's case, 55 Ala. 252. Also "did remove or conceal one bale of cotton," etc.—Nixon's case, 55 Ala. 120; Atwell's case, 63 Ala. 61. Also did steal "national bank-notes, or gold or silver coin," etc.—Wesley's case, 61 Ala. 282. "Did sell vinous or malt liquors" to a minor.—Adler's case, 55 Ala. 16. Also that defendants were "members or partners of a corporation or co-partnership."—Barnett's case, 54 Ala. 579. Also that one maliciously injured a "mare or an ox."—Burgess's case, 44 Ala. 190. Also to allege that assault was committed by pouring, or attempting to pour, a "mixture of spirits of turpentine and pepper."—Murdock's case, 65 Ala. 520. Also "did carnally know or abuse," etc.—Johnson's case, 50 Ala. 456. But insufficient to allege house burned as a "barn or stable," "a barn-house or building."—Horton's case, 60 Ala. 72. Also defective to aver that defendant "sold, bartered, or otherwise disposed of, or permitted to be taken, spirituous, vinous, or malt liquors in less than," etc. Raisler's case, 55 Ala. 64. See also Hurst's case, 86 Ala. 606; Gunter's case, 111 Ala. 23.

4913 (4385) (4798) (4125) (575). **Joinder of offenses in same count.**—When offenses are of the same character, and subject to the same punishment, the defendant may be charged with the commission of either in the same count in the alternative.

This statute merely permits to be charged in one count, what the common law permitted in different counts, and is not unconstitutional.—Burdine's case, 25 Ala. 60; Sherrod's case, Ib. 78; Horton's case, 53 Ala. 488; Sparrenberger's case, Ib. 481; Noble's case, 59 Ala. 78; Sampson's case, 107 Ala. 80. But each alternative averment must present an indictable offense.—Pickett's case, 60 Ala. 77; Horton's case and Noble's case, supra; Howard's case, 108 Ala. 571; Orr's case, 107 Ala. 35. Two grades of same offense, whether misdemeanor or felony, visited with same kind of penalty, may be joined in same count. Ward's case, 22 Ala. 16; Swallow's case, Ib. 20; Ben's case, Ib. 9; Mooney's case, 8 Ala. 328; Barber's case, 34 Ala. 213. See further, as to the doctrine of joinder of offenses in same or different counts.—Wooster's case, 55 Ala. 217 (overruling Norvell's case, 50 Ala. 174); Quinn's case, 49 Ala. 353; Johnson's case, 35 Ala. 370; Howard's case, 108 Ala. 571; Broughton's case, 105 Ala. 103; Grimes's case, 105 Ala. 86; Walker's case, 97 Ala. 85; Bell's case, 48 Ala. 684; Hill's case, 67 Ala. 39; Reynolds's case, 92 Ala. 44; McGuff's case, 88 Ala. 150; Carleton's case, 100 Ala. 130. **As to the right to make the prosecutor elect,** see Mayo's case, 30 Ala. 32; Hugh's case, 35 Ala. 351; Elam's case, 26 Ala. 48; Smith's case, 52 Ala. 384; Johnson's case, 29 Ala. 62; Bonham's case, 65 Ala. 456; Oxford's case, 33 Ala. 416; Seibert's case, 40 Ala. 60; Beason's case, 72 Ala. 191; Beasley's case, 59 Ala. 20; Bass's case, 63 Ala. 108; Peacher's case,

61 Ala. 22; Ex parte Tompkins, 58 Ala. 71; Orr's case, 107 Ala. 35; Howard's case, 108 Ala. 571; Tanner's case, 92 Ala. 1; Butler's case, 91 Ala. 87. Election on joinder of several misdemeanors not required, and prosecution may seek a conviction on all of them, and they may be tried at same time.—Wooster's case, 55 Ala. 217. A felony and a misdemeanor cannot be joined, even in separate counts.—James's case, 104 Ala. 20; Adam's case, 55 Ala. 143. Whether an indictment charging in the same count the murder of two infants by starvation or exposure charges one or two offenses, quære.—Griffith's case, 90 Ala. 583. An indictment which charges in a single count the unlawful killing of an ox and a cow does not charge two offenses; there is no room for an election, but there can be no conviction if proof shows only killing of one, or of both by separate acts.—Thomas's case, 111 Ala. 51. Where several offenses are joined, either in the same count or in separate counts, the verdict of guilty must show of what offense, but need not express it "ipsissimis verbis."—Davis's case, 52 Ala. 357; White's case, 74 Ala. 31; Kilgore's case, 74 Ala. 9; Sampson's case, 107 Ala. 76.

ARTICLE 3.

PRESENTING, FILING, WITHDRAWING, CERTIFYING AND RECORDING INDICTMENTS.

4914 (4386) (4821) (4148) (598). **Indictments filed, but not entered on minutes; inspection of.**—All indictments must be presented to the court by the foreman of the grand jury, in the presence of at least eleven other jurors; must be indorsed "filed," and the indorsement dated and signed by the clerk; but no entry of an indictment found must be made on the minutes, nor must any indictment be inspected by any other person than the solicitor, the presiding judge and the clerk of the court, until the defendant has been arrested, or has given bail for his appearance.

Court has control over these matters and may cause clerk to indorse, etc., as of date of, filing, etc., at any time during term.—Franklin's case, 28 Ala. 9. Returning and filing need not appear on minutes.—Mose's case, 35 Ala. 421; Russell's case, 33 Ala. 366. See also Stanley's case, 88 Ala. 154. When cannot arrest judgment on account of informality, in finding, returning, or filing. Russell's case, 33 Ala. 366. What entry shows sufficient return and presentation.—McCuller's case, 49 Ala. 39; Wesley's case, 52 Ala. 182. When date of filing indorsed as evidence.—Sellers's case, 52 Ala. 368. It is no valid objection to indictment that foreman signs it by initials of Christian name only, or that solicitor indorses on it names of state witnesses after filing, without order of court.—Germolgez's case, 99 Ala. 216. Indictment indorsed "true bill," signed by foreman, marked "filed" and dated by clerk is a substantial compliance with statute.—McKee's case, 82 Ala. 32. Solicitor need not sign indictment. Cross's case, 78 Ala. 430; Joyner's case, 78 Ala. 448. It is no ground for objection that it is signed by deputy-solicitor.—Ib.

4915 (4387) (4822) (4149). **Withdrawal and filing of indictment.**—In all criminal cases in the circuit court, in which a capias has issued for two terms, and has been returned "not found," the solicitor may, by leave of the court, withdraw and file the indictment, with leave to reinstate the same when the ends of justice require such reinstatement.

When operates a discontinuance, and how available to defendant.—Drinkard's case, 20 Ala. 9; Scott's case, 94 Ala. 80.

4916 (4388). **Secret records of indictments made and kept by clerk; uses of.**—The clerk of the court in which indictments are returned shall, within twenty days after the filing thereof, and without allowing them to be taken out of his custody or control, record the

same, with the indorsement thereon, in a well-bound book, which shall be properly indexed and kept secret, as indictments are required to be kept secret, before the arrest of the defendant; and if the office of the clerk is furnished with an iron safe or vault, it shall be kept therein; but the court may require the production of such book on the trial of a defendant, for comparison of the indictment against such defendant with the record thereof, only in cases where the trial is had on a certified copy of the indictment as provided by law.

ARTICLE 4.

AMENDMENTS; NOLLE PROSEQUI; NEW INDICTMENT.

4917 (4389) (4816) (4143) (593). **Amendment allowed by consent on account of variance.**—An indictment may be amended, with the consent of the defendant, when the name of the defendant is incorrectly stated, or when any person, property, or matter therein stated is incorrectly described.

Consent of defendant must appear of record, and amendment must follow the terms of consent.—Shiff's case, 84 Ala. 454; Stone's case, 105 Ala. 60. Amendment **striking out one count** is equivalent to a nol. pros. of that court, and is not a reversible error.—Salm's case, 89 Ala. 56. By consenting to amendment after trial entered upon, defendant waives all objection as to being in jeopardy.—Reynold's case, 92 Ala. 44.

4918 (4390) (4817) (4144) (594). **When nol. pros. entered, and new indictment ordered to be preferred.**—If the defendant will not consent to such amendment, the prosecution may be dismissed at any time before the jury retires, as to the count in the indictment to which the variance applies; and the court may order another indictment to be preferred at the same, or at a subsequent term, in which case an entry of record must be made to the effect following:

"The State } In this case, it appeared from the evidence that there
vs. } was a variance between the allegations of the indict-
A. B. } ment and the proof in this (setting out the variance);

or it appeared from the evidence that the defendant's name was—— —— (stating it); and the defendant refusing to allow the indictment to be amended, the prosecution was dismissed before the jury retired, and another indictment was ordered to be preferred."

Unsafe practice and reversible error to permit amendment without consent of accused.—Gregory's case, 46 Ala. 151; Johnson's case, Ib. 212. Allowed by consent of accused.—Ross's case, 55 Ala. 177. On variance between allegations and proof, nol. pros. may be had, and accused tried under new indictment; also where indictment fatally defective; accused not in jeopardy.—Martha's case, 26 Ala. 72; White's case, 49 Ala. 344; Western's case, 63 Ala. 155. Statute not unconstitutional.—Kreps's case, 8 Ala. 951. Suspends running of statute of limitation; what judgment-entry must show to suspend limitation; when defendant entitled to acquittal.—Coleman's case, 71 Ala. 312. When error to enter nol. pros. as to one of two defendants.—McGehee's case, 58 Ala. 360.

ARTICLE 5.

INDICTMENT LOST OR DESTROYED, SUBSTITUTED.

4919 (4391) (4818) (4145) (595). **Indictment lost or destroyed, another preferred.** — When an indictment is lost, mislaid, or destroyed, the court may, on satisfactory proof thereof, order another indictment to be preferred at the term at which such proof is made, or at a subsequent term; in which case an entry of record must be made to the effect following:

"The State vs. A. B. } In this case, it appearing to the court that an indictment was preferred against the defendant at the —— term, 18— (stating the time), and that said indictment is lost, mislaid, or destroyed; it is, therefore, ordered that a new indictment be preferred against the defendant for the same offense."

At common law, if indictment was lost or destroyed, it could not be substituted.—Ganaway's case, 22 Ala. 772. Inherent power in court to substitute indictment lost during trial.—Bradford's case, 54 Ala. 230.

4920 (4392). **If recorded, a certified copy of record produced.** When it is shown to the court that an original indictment, recorded as required by law, has been lost, destroyed, or so mutilated as to be illegible, the court shall direct the clerk to make and certify a copy thereof from such record, upon which the defendant may be arraigned and tried as upon the original indictment.

ARTICLE 6.

INDICTMENT QUASHED, OR JUDGMENT ARRESTED, AND NEW INDICTMENT.

4921 (4393) (4823) (4150) (599). **Not quashed, etc., without leave of court.**—An indictment must not be quashed, dismissed, discontinued, or abandoned, without the permission of the court; and such permission must be entered of record.

When nolle prosequi entered as to an acquitted defendant, after verdict and reversal by supreme court of one convicted, to cure objection of a misjoinder of two defendants.—Cox's case, 76 Ala. 68, citing Berry's case, 65 Ala. 117. Permission to nol. pros. not final judgment from which writ of error will lie.—Willingham's case, 14 Ala. 539. Court may allow a nol. pros. where demurrer interposed, without passing on demurrer.—Lacey's case, 58 Ala. 385; Wooster's case, Ib. 217. Also to one of several counts after close of evidence, which is acquittal as to such count.—Barnett's case, 54 Ala. 579. But see Grogan's case, 44 Ala. 9. Operates an acquittal after jeopardy begins.—Grogan's case, 44 Ala. 9. No bar to subsequent indictment.—Martha's case, 26 Ala. 72. Nol. pros. as to one count, before jeopardy, merely destroys, but does not acquit of that count.—Walker's case, 61 Ala. 30. Nol. pros. as to one count, in absence of some of the defendants, destroys such count as to them, as well as to those present.—Ib. When error to enter nol. pros. as to one of two defendants.—McGehee's case, 58 Ala. 360. Indictment found at unauthorized special term should be quashed.—Davis's case, 46 Ala. 80. Motion to quash or strike from files, and other objections to indictment as a court record, come before pleading on merits.—Jackson's case, 74 Ala. 26. Court not bound to quash defective indictment on motion, but may put defendant to demurrer.—Jones's case, 5 Ala. 666; Boulo's case, 49 Ala. 22. Motion to quash in sound discretion of court; what not an exception.—White's case, 74 Ala. 31. Must be made first in court below, not on appeal.—Jackson's case, 74 Ala. 26.

Held that if one count quashed on motion, all vitiated.—Rose's case, Minor, 28. But not so on demurrer.—Turner's case, 40 Ala. 21. Improper, in support of motion, to show that twelve of first grand jury did not concur in the finding.—Spigener's case, 62 Ala. 383.

4922 (4394) (4819) (4146) (596). **If quashed or judgment arrested, another indictment preferred.**—When the judgment is arrested, or the indictment quashed, on account of any defects therein, or because it was not found by a grand jury regularly organized, or because it charged no offense, or for any other cause, the court may order another indictment to be preferred for the offense charged, or intended to be charged; and in such case an entry of record must be made setting forth the facts.

See Carson's case, 108 Ala. 38. If record shows reversible irregularity in organization of grand jury, indictment should be quashed, and case ordered before another grand jury.—Weston's case, 63 Ala. 155. Sufficiency of a new indictment must be tested as if it were found at time former was found.—McIntyre's case, 55 Ala. 167. Court has inherent power without the statute to hold accused to answer new indictment, without hearing testimony to show guilt.—Ex parte Graves, 61 Ala. 381. Indictment quashed on demurrer while grand jury in session, no error to hold prisoner until they find new indictment. Crumpton's case, 43 Ala. 31. The better and more usual practice is, to defer the nol. pros., or quashing of the defective indictment, until the second indictment is found.—Perkins's case, 66 Ala. 457. Suspends statute of limitations.—Smith's case, 79 Ala. 21. See note to section 5075. **Motion in arrest of judgment** must be disposed of before sentence.—Hood's case, 44 Ala. 81. Can only be predicated on matter of record, without aid of bill of exceptions. Sparks's case, 59 Ala. 82; Morgan's case, 48 Ala. 65; Brown's case, 52 Ala. 345; Blount's case, 49 Ala. 381. Any objection sustaining a demurrer will sustain such motion.—Francois's case, 20 Ala. 83; Nicholson's case, 18 Ala. 529; Beasley's case, Ib. 535; Martin's case, 28 Ala. 71; s. c., 29 Ala. 30; Beckwith's case, 1 Stew. 318. Will be sustained when jury fail to ascertain degree of murder. Johnson's case, 17 Ala. 618. Also, if trial had on pleas of not guilty and former acquittal at same time in felony.—Faulk's case, 52 Ala. 416. Also if indictment found by grand jury organized by court without authority.—O'Byrne's case, 51 Ala. 25. Separation or misconduct of jury no ground for this motion, but may be for a new trial.—Williams's case, 48 Ala. 85; Morgan's case, Ib. 65; Crocker's case, 47 Ala. 53; Franklin's case, 29 Ala. 14; Brister's case, 26 Ala. 107. Also when verdict against evidence or charge of court.—Blount's case, 49 Ala. 381. This motion not available, on the ground that a juror had been a member of the indicting grand jury.—Battle's case, 54 Ala. 93. Nor that a Christian name of a third person was alleged by initials only.—Lyon's case, 61 Ala. 224. Nor because record fails to show whether conviction was for act committed before or after passage of statute making felony out of what had been misdemeanor.—McDowell's case, 61 Ala. 172. An objection to an indictment that the record did not show the appointment of a foreman must be by motion to quash, or to strike from the file, before plea to issue.—Dotson's case, 88 Ala. 211. The pendency of another indictment in same court for same offense is no cause to quash, to strike from file, or plea in abatement, but a conviction or acquittal under one is a bar to the other.—White's case, 86 Ala. 74.

ARTICLE 7.

FORMS OF INDICTMENT.

4923 (4899) (4824) (4141) (591). **Following forms sufficient.** The following forms of indictment, in all cases in which they are applicable, are sufficient; and analogous forms may be used in other cases.

Laws prescribing forms of indictment not prohibited; sufficiency of accusation; forms allowed abridging and simplifying common-law forms.—Noles's case, 24 Ala. 672; Elam's case, 25 Ala. 53; Burdine's case, Ib. 60; Sherrod's

case, Ib. 78; Thompson's case, Ib. 41; Salomon's case, 27 Ala. 26; Schwartz's case, 37 Ala. 460; Bowles's case, 46 Ala. 204; Johnson's case, 46 Ala. 212; Bryan's case, 45 Ala. 86; Wesley's case, 52 Ala. 182; Danner's case, 54 Ala. 127; Bradford's case, 54 Ala. 230; Sandy's case, 60 Ala. 58; Spigener's case, 62 Ala. 383; Smith's case, 63 Ala. 55; McCullough's case, Ib. 75; Haley's case, Ib. 89; Tatum's case, Ib. 147; Phillips's case, 68 Ala. 469; Billingslea's case, Ib. 486; Pace's case, 69 Ala. 231 (affirmed, 106 U. S. 583); Andrew's case, 78 Ala. 483; Bogan's case, 84 Ala. 449; McGuff's case, 88 Ala. 147; Linton's case, Ib. 216; Huffman's case, 89 Ala. 33; Williams's case, 91 Ala. 14; Rosson's case, 92 Ala. 76. Reeves's case, 95 Ala. 31; Walker's case, 96 Ala. 53; Leonard's case, 96 Ala. 108; Watt's case, 97 Ala. 72; Thompson's case, 106 Ala. 67; Espalla's case, 108 Ala. 38. Indictment charging **an attempt** to commit larceny, not stating particular acts, is sufficient.—Jackson's case, 91 Ala. 55. And so of an attempt to commit crime against nature.—Bradford's case, 104 Ala. 68. Not sufficient to pursue form in Code, if form defective in description of the offense.—Bryan's case, 45 Ala. 86.

1. CAPTION, COMMENCEMENT AND CONCLUSION. §4893 (4365).

The State of Alabama, ——— county. } Circuit court, ——— term, 18—.

The grand jury of said county charge that, before the finding of this indictment, etc. (describing the offense as in the following forms), against the peace and dignity of the State of Alabama.

E. F. J., Solicitor of the ——— circuit.

2. ABANDONMENT OF FAMILY UNDER VAGRANT ACT. §5628 (4047).

A. B., having a family in said county, and being able to contribute to their support by his means (or, being an able-bodied person, by his industry), did abandon and leave them in danger of becoming a burden to the public, against, etc.

3. ABUSIVE, OBSCENE, OR INSULTING LANGUAGE. §4306 (4031).

A. B. did enter into or go sufficiently near to the dwelling-house of C. D., and, in the presence or within the hearing of the family, or a member of the family of the occupants thereof (or A. B., in the presence or hearing of a woman), made use of abusive, insulting, or obscene language, etc.

4. AFFRAY. §4311 (3764).

A. B. and C. D. did fight together in a public place.

5. ALTERING MARKS, BRANDS, ETC. §4749 (3831), §4910 (4382).

A. B., with intent to defraud, marked or branded an unmarked horse, the property of C. D.

6. ARSON IN THE FIRST DEGREE. §4336 (3780).

A. B. willfully set fire to or burned a dwelling-house of C. D., in which there was at the time a human being.

Sands's case, 80 Ala. 201; Dickson's case, 81 Ala. 61.

7. ARSON IN THE SECOND DEGREE. §4337 (3781).

A. B. willfully set fire to or burned an uninhabited dwelling-house of C. D., in which there was at the time no human being.

Smoke's case, 87 Ala. 143; Sands's case, 80 Ala. 201.

8. ARSON IN THE THIRD DEGREE. §4340 (3784).

A. B., under such circumstances as did not constitute arson in the first or second degree, did willfully set fire to or burn a building (or, as the alternative may be).

May's case, 85 Ala. 18; James's case, 104 Ala. 27; Leonard's case, 96 Ala. 108.

9. ASSAULT AND BATTERY. §4343 (3747).

A. B. assaulted and beat C. D.

Murdock's case, 65 Ala. 520; Bonner's case, 97 Ala. 47.

10. ASSAULT WITH COWHIDE, ETC., HAVING PISTOL TO INTIMIDATE. §4344 (3748).

A. B. did assault and beat C. D. with a cowhide, stick, or whip, having in his possession at the time a pistol (or a bowie-knife, or other deadly weapon), with the intent to intimidate the said C. D., and prevent him from defending himself.

11. ASSAULT BY LYNCHING. §5088 (3750).

A. B. and C. D. did abuse, whip, or beat E. F., upon an accusation that he had been guilty of stealing (or to force the said E. F. to disclose where he was on the night of the twenty-first of August, one thousand eight hundred and sixty-five or to leave the country, etc., as the case may be).

12. ASSAULT WITH INTENT TO MURDER. §4346 (3751).

A. B., unlawfully, and with malice aforethought, did assault C. D., with the intent to murder him.

13. ASSAULT WITH INTENT TO RAVISH. §4346 (3751).

A. B. did assault C. D., a woman, with the intent forcibly to ravish her.

Toulett's case, 100 Ala. 72.

14. ASSAULT WITH INTENT TO ROB. §4346 (3751).

A. B. assaulted C. D. with the felonious intent, by violence to his person, or by putting him in fear of some serious and immediate injury to his person, to rob him.

15. ASSAULT WITH INTENT TO MAIM. §4346 (3751).

A. B. assaulted C. D. with the intent unlawfully, maliciously and intentionally to cut out or disable his tongue, or to put out or destroy his eye.

16. BETTING AT CARDS, DICE, ETC. §4797 (4057).

A. B. bet at a game played with cards or dice, or some device or substitute for cards or dice, at a tavern, inn, storehouse for retailing spirituous liquors, or house or place where spirituous liquors were at the time sold, retailed, or given away, or in a public house, high-

way, or some other public place, or at an outhouse where people resort, against, etc.

Rosson's case, 92 Ala. 76; Thompson's case, 99 Ala. 173; Clayborne's case, 103 Ala. 53.

17. BETTING AT GAMING-TABLE, ETC. §4797 (4057).

A. B. bet at a gaming-table for gaming; or at a game called keno, or roulette, etc.

18. BIGAMY. §4406 (4016).

A. B., having a wife then living, unlawfully married one C. D.

Parker's case, 77 Ala. 47.

19. BRIBERY TO COMMIT A FELONY. §4416 (3920).

A. B. did corruptly give, offer, or promise one C. D. a certain gift, gratuity or thing of value, to wit: (Describing the gift or thing of value, as one horse or ten dollars), with intent to induce or influence said C. D. to commit a certain crime or offense punishable as a felony, to wit, the offense of murder by unlawfully and with malice aforethought killing one E. F. (or, the offense of perjury by falsely and corruptly swearing on the trial of the case of the State of Alabama v. said A. B., in the ——— court of ——— county, which case was a criminal prosecution against said A. B. for the offense of murder of one E. F., that he, said C. D., was present at the time the homicide was committed, and that said A. B. did not cut said E. F.; or, that at the time the homicide was committed said A. B. was at the house of said C. D., a place other than the place at which the homicide was committed).

Rivers's case, 97 Ala. 72.

20. BRINGING STOLEN GOODS INTO THIS STATE. §5053 (3793).

A. B. feloniously took and carried away, in the State of Mississippi, one mule, the personal property of C. D., and brought said mule into the county of Mobile, in this state, against, etc.

21. BURGLARY. §4417 (3786).

A. B., with intent to steal (or to commit arson in the first degree, or other designated felony, as the case may be, or in the alternative), broke into and entered the dwelling-house, or a building within the curtilage of the dwelling-house, or shop, store, warehouse, or other building, of C. D., in which goods, merchandise, or clothing, things of value (or other stated article of value, as the case may be), were kept for use, sale, or deposit, against, etc.

Barber's case, 78 Ala. 19; Dismukes's case, 83 Ala. 287; Thomas's case, 97 Ala. 3; Walker's case, 97 Ala. 85; Gilmore's case, 99 Ala. 154.

22. BURGLARY IN RAILROAD-CAR. §4418 (3787).

A. B., with intent to steal (or to commit a felony, describing it as "murder," or as the case may be), broke into and entered a railroad-

car, the property of the Louisville and Nashville Railroad Company, a corporation under the laws of the State of Kentucky (or as the case may be), upon or connected with a railroad in this state, in which goods, merchandise, or furniture, valuable things, were kept for use, deposit, or transportation as freight.

Johnson's case, 98 Ala. 57.

23. BURGLARIOUS INSTRUMENTS IN POSSESSION. §4419 (3788).

A. B. had in his possession an implement or instrument designed and intended by him to aid in the commission of burglary, or larceny, in this state, or elsewhere, against, etc.

24. CARD OR DICE PLAYING AT PUBLIC PLACES, HOUSES, ETC. §4792 (4052), §4794 (4054).

A. B. played at a game with cards or dice, or some device or substitute for cards or dice, at a tavern, inn, storehouse for retailing spirituous liquors, or house or place where spirituous liquors were at the time sold, retailed, or given away, or in a public house, highway, or some other public place, or at an outhouse where people resort.

25. CARNAL KNOWLEDGE OF GIRL CHILD. §5447 (3739).

A. B. did carnally know, or abuse in the attempt to carnally know, C. D., a girl under the age of ten years.

McGuff's case, 88 Ala. 147; Toulett's case, 100 Ala. 72.

26. CARRYING CONCEALED WEAPONS. §4420 (3775), §4424 (3779).

A. B. carried a pistol concealed about his person.

Bell's case, 89 Ala. 61.

27. CHALLENGING TO FIGHT A DUEL. §4657 (3767).

A. B. gave, accepted, or knowingly carried a challenge in writing, or in words (or as the case may be), to fight in single combat, with a deadly weapon, against, etc.

28. COMPELLING WOMAN BY FORCE TO MARRY. §4301 (3743).

A. B. did take C. D., a woman, unlawfully, and, against her will, by menace, force, or duress, did compel her to marry him (or to marry one E. F., or to be defiled, etc., as the case may be).

29. COMPOUNDING FELONY. §4427 (4006).

A. B., knowing that one C. D. had been guilty of the commission of burglary, took, or agreed to take, from the said C. D. money or other property, to compound or conceal such felony, or to abstain from any prosecution therefor.

Watts's case, 97 Ala. 72.

30. CONSPIRACY TO COMMIT A FELONY OR MISDEMEANOR. §4428 (4007), §4429 (4008).

A. B. and C. D. conspired together to unlawfully, and with malice aforethought, kill E. F. (or to assault and beat E. F., as the case may be), against, etc.

Thompson's case, 106 Ala. 74.

31. COUNTERFEITING GOLD OR SILVER COIN. §4724 (3856).

A. B. counterfeited a silver coin of the republic of Mexico, called a dollar, which was at the time, by law, usage and custom, current in this state.

32. COUNTERFEIT COIN IN POSSESSION, ETC. §4724 (3856).

A. B. had in his possession a counterfeit of a gold coin of the United States, of the denomination of ten dollars, which was at the time current in this state, knowing the same to be counterfeit, and with intent to defraud or injure, by uttering the same as true, or causing it to be so uttered.

33. DECOYING AWAY CHILD. §4303 (3745).

A. B. did take or decoy away C. D., a child under twelve years of age, with intent to detain or conceal the said C. D. from his (or her) parents (or guardian, as the case may be), etc.

34. DEFAMATION. §5065 (3773).

A. B. did falsely and maliciously speak (write or print, as the case may be) of and concerning C. D. in the presence of E. F., charging him (or her, as the case may be) with a want of chastity (or with having committed larceny, or perjury, as the case may be), in substance as follows, to wit: (Here setting out the substance of the words spoken, written, or printed, as the case may be).

35. DESTROYING PUBLIC BRIDGE. §5621 (3886).

A. B. willfully destroyed, otherwise than by burning, a public bridge, erected by authority of law, on a road leading from Greenville to Andalusia, against, etc.

36. DISCLOSURE OF INDICTMENT BY OFFICER OF COURT OR GRAND JUROR. §5047 (3969).

A. B., an officer of the court, to wit, a deputy-sheriff (or a grand juror, as the case may be), disclosed the fact that an indictment had been found by the grand jury of said county against one C. D. before the defendant had been arrested, or had given bail for his appearance to answer thereto, against, etc.

37. DISTURBING WOMEN AT PUBLIC ASSEMBLIES, OR IN STEAMBOAT, CAR, ETC., BY PROFANITY, ETC. §4653 (4032).

A. B., by rude or indecent behavior, or by profane or obscene lan-

guage, willfully disturbed a woman at a public assembly met for instruction or recreation, against, etc.; or, A. B., by rude and indecent behavior, or by profane or obscene language, willfully disturbed a woman on a railroad-car (steamboat, or in any other public conveyance, as the case may be).

38. DISTURBING RELIGIOUS WORSHIP. §4654 (4033).

A. B. willfully interrupted or disturbed an assemblage of people, met for religious worship, by noise, profane discourse, or rude or indecent behavior, at or near the place of worship (or by fighting at or near the place of worship, as the case may be).

39. EXHIBITING FALSE SAMPLES. §4772 (3849).

A. B. fraudulently exhibited a false sample of sugar, by means whereof one C. D. was injured.

40. EMBEZZLEMENT, ETC., BY BANK OFFICER. §4660 (3796), §4673 (3810).

A. B., an officer of the Central Bank of Alabama, a bank incorporated under the laws of said state, embezzled, or fraudulently converted to his own use, money to about the amount of five hundred dollars (or bank-notes to the amount of about one thousand dollars, as the case may be), which was in the possession of the said bank, or deposited therein.

Reeves's case, 95 Ala. 31; Lang's case, 97 Ala. 41; Huffman's case, 89 Ala. 33.

41. EMITTING AND CIRCULATING CHANGE-BILLS. §5546 (4143), §5547 (4144).

Form for emitting.

A. B., without authority of law, signed, made, emitted, or countersigned, or caused or procured to be made, emitted, signed, or countersigned, a certain paper to answer the purpose of money, or for general circulation, in substance as follows: (Here set out substantially the paper), against, etc.

Form for circulating.

A. B. passed or circulated a certain paper, the substance or tenor of which is as follows: (Setting it out in substance); the said paper having been issued without the authority of law, to answer the purposes of money, against, etc.

42. ENDANGERING LIFE BY BURSTING BOILER, ETC. §5379 (4113).

A. B., being the engineer of a steamboat used for the conveyance of passengers or freight, and in charge of the machinery thereof, or of some of the apparatus for the generation of steam, from gross negligence, or from ignorance, created, or allowed to be created, such an undue quantity of steam as to burst the boiler, or other apparatus in which steam was generated, or some apparatus or machinery therewith connected, and thereby endangered human life.

43. ENDANGERING LIFE BY OVERLOADING STEAMBOAT. §5381 (4115).

A. B., while navigating a steamboat for gain, willfully received on board thereof so many passengers, or such a quantity of freight, that by means thereof such steamboat sunk, or overturned, and thereby endangered the life of a human being.

44. ENGAGING IN OR CARRYING ON BUSINESS WITHOUT LICENSE. §5467 (3892).

A. B. engaged in or carried on the business of (here state kind of business) without a license, and contrary to law, against, etc.

If the business be selling liquor without license, the town or place should be stated, as in the following form: A. B. engaged in or carried on the business of a retail dealer (or wholesale dealer, as the case may be) in spirituous, vinous, or malt liquors, in a city, town, or village of less than one thousand inhabitants (or of more than one thousand and less than five thousand inhabitants; or over five thousand inhabitants, as the case may be; or, if the place is not a city, town, or village, it may be described as "at a place not in any city, town, or village"), without a license, and contrary to law, against, etc.

45. ENTICING AWAY, INTERFERING WITH, ETC., SERVANT, UNDER WRITTEN CONTRACT. §5505 (3757).

A. B. knowingly interfered with, hired, engaged, enticed away, or induced C. D., a laborer or servant who had stipulated or contracted, in writing, to serve one E. F. a given number of days, weeks, months, or for one year, before the expiration of the term stipulated or contracted for, such contract being in force and binding upon the parties thereto, without the consent of the said E. F., to whom the service was due, given in writing, or in the presence of some veritable white person, against, etc.

46. EXTORTION. §5103 (3926).

A. B., being a justice of the peace of said county, knowingly took from C. D. five dollars for the issue of a search-warrant, being a greater fee than was by law allowed for such service.

47. FALSE PERSONATION, OBTAINING PROPERTY BY. §4732 (3814), §4908 (4380).

A. B. did falsely personate C. D., with intent to defraud, and, in such assumed character, received one hundred dollars, intended to have been delivered to the said C. D.

48. FALSE PRETENSES, OBTAINING MONEY BY. §4729 (3811), §4908 (4380).

A. B. did falsely pretend to C. D., with intent to defraud, that he had ten bales of cotton packed and ready for delivery, and, by means of such false pretense, obtained from the said C. D. one hundred dollars (or ten pieces of cloth, as the case may be).

White's case, 86 Ala. 69; Jenkins's case, 97 Ala. 66; Headley's case, 106 Ala. 109.

49. FALSE PRETENSES, OBTAINING SIGNATURE BY. §4731 (3813).

A. B. did falsely pretend to C. D., with intent to injure or defraud, that (here set out the false pretenses), and, by means of such false pretenses, obtained from C. D. his signature to a certain written instrument, in substance as follows: (Here set out instrument as near as may be), the false making of which is forgery, against, etc.

50. FORGERY OF WILL, DEED, NOTE, BILL, BOND, RECEIPT, OR OTHER WRITTEN INSTRUMENT. §4720 (3852).

A. B., with intent to injure or defraud, did falsely make, alter, forge, counterfeit (or totally obliterate, as the case may be), an instrument in writing, in words and figures substantially as follows: (Here set out the instrument in substance), against, etc.

Espalla's case, 108 Ala. 38; Williams's case, 90 Ala. 649; Fomby's case, 87 Ala. 36; Baysinger's case, 77 Ala. 63; Agee's case, 113 Ala. 52.

51. FRAUDULENT CONVEYANCE. §4756 (3834).

A. B., with the intent to hinder, delay, or defraud his creditors, did make a conveyance of property to C. D.; or, A. B. did accept, from C. D. a conveyance of property, with the intent to hinder, delay, or defraud the creditors of the said C. D.

52. GRAND LARCENY. §5049 (3789), §5051 (3791).

A. B. feloniously took and carried away a horse, the personal property of C. D. (or a gold watch of the value of —— dollars, the personal property of C. D.); or,

A. B. feloniously took and carried away from a building on fire, or which was removed in consequence of an alarm of fire, a silver watch, of the value of —— dollars, the personal property of C. D.; or,

A. B. feloniously took and carried away from a dwelling-house a diamond breastpin, of the value of —— dollars, the personal property of C. D.; or,

A. B. feloniously took and carried away from the person of C. D. one bank-note for one dollar on the Bank of Mobile, of the value of —— dollars, the personal property of C. D.; or,

A. B. knowingly, willfully, and without the consent of the owner, entered upon the land of C. D. and cut and carried off timber (or rails, as the case may be), of the value of twenty-five dollars or more against, etc.

Gordon's case, 71 Ala. 315; Abernathy's case, 78 Ala. 411; Walker's case, 97 Ala. 85; Bolling's case, 98 Ala. 80; Bailey's case, 99 Ala. 143; Peters's case, 100 Ala. 10; Brown's case, 100 Ala. 92; Burrage's case, 113 Ala. 108.

53. HORSE-RACING ON PUBLIC ROAD. §5356 (4097).

A. B. unlawfully engaged in a horse-race on a public road, against, etc.

54. INCEST. §4889 (4013).

A. B., a man, being the father of one E. B., a woman, and within the degree of consanguinity or relationship within which marriages are declared by law to be incestuous and void, and knowing of such consanguinity or relationship, did have sexual intercourse with the said E. B., or did live with her in a state of adultery, against, etc.; or, A. B., a man, and C. D., a woman, being within the degree of relationship within which marriages are declared by law to be incestuous and void, to wit, the said C. D. being the widow of one E. F., the uncle of the said A. B., and, knowing of such relationship, did intermarry, or have sexual intercourse together, or did live together in adultery, against, etc.

Baker's case, 30 Ala. 521.

55. KEEPING GAMING-TABLES. §4795 (4055), §4796 (4056).

A. B. kept, exhibited, or was interested or concerned in keeping or exhibiting, a gaming-table for gaming.

Bibb's case, 83 Ala. 84.

56. KIDNAPPING. §4304 (3746).

A. B. unlawfully or forcibly inveigled, enticed, or confined C. D., with intent to cause said C. D. to be imprisoned against his will, or to be sent out of the state against his will, etc., as the case may be.

57. LIVING IN ADULTERY OR FORNICATION. §4310 (4012).

A. B., a man, did live with C. D., a woman, in the state of adultery or fornication; or, A. B., a man, and C. D., a woman, did live together in a state of adultery or fornication.

58. LOTTERIES. §4808 (4068).

A. B. set up, or was concerned in setting up or carrying on, a lottery.

59. MALICIOUS INJURY TO ANIMALS. §5090 (3869), §4910 (4382).

A. B. unlawfully and maliciously disabled or injured a cow, the property of C. D.

60. MANSLAUGHTER IN THE FIRST DEGREE. §4860 (3731).

A. B. unlawfully and intentionally, but without malice, killed C. D. by stabbing him with a knife, etc. (or by striking him with a stick, etc., as the case may be).

61. MANSLAUGHTER IN SECOND DEGREE. §4860 (3731).

A. B. unlawfully, but without malice, or the intention to kill, killed C. D. by negligently throwing a brick from the top of a house, etc. (or by negligently running over him with a horse, or by striking him with a stick, etc., as the case may be).

62. MAYHEM. §5095 (3735).

A. B. unlawfully, maliciously, and intentionally cut out or disabled the tongue of C. D., or put out or destroyed an eye of C. D., etc.

63. MURDER. §4854 (3725).

A. B. unlawfully, and with malice aforethought, killed C. D., by shooting him with a gun or pistol, etc. (or by striking him with an iron weight, or by throwing him from the top of a house, or by pushing him into the river, whereby he was drowned, etc., as the case may be).

Redd's case, 68 Ala. 492; Wilson's case, 84 Ala. 426; Griffith's case, 90 Ala. 583; Reese's case, 90 Ala. 624; Hornsby's case, 94 Ala. 55. Second degree.—See Ward's case, 96 Ala. 100.

64. MURDER BY KILLING IN SUDDEN RENCOUNTER WITH CONCEALED WEAPON. §4856 (3727).

A. B. unlawfully killed C. D. in a sudden rencounter, by the use of a deadly weapon concealed before the commencement of the fight, the said A. B. being the assailant, and his adversary having no deadly weapon drawn.

65. NEGLIGENT ESCAPE BY OFFICER. §4702 (3993).

A. B., while jailer of said county, having the legal custody of one C. D., who was convicted of grand larceny, negligently suffered the said C. D. to escape.

66. OBSTRUCTING PUBLIC ROAD. §5388 (4122).

A. B. did obstruct a certain public road, known as the "Chickasabogue" road, by a fence, bar (or other impediment may be alleged in the alternative, but must be specified), without leave of the court of county commissioners first had and obtained, against, etc.

Johnson's case, 32 Ala. 583.

67. PERJURY ON TRIAL OF A CRIMINAL CASE. §5198 (3906), §5199 (3908).

A. B., on his examination as a witness, duly sworn to testify on the trial of one C. D., in the ——— court of ——— county, under an indictment for the murder of one E. F., which said court had authority to administer such oath, falsely swore, etc. (stating the facts), the matters so sworn to being material, and the testimony of the said A. B. being willfully and corruptly false.

Williams's case, 68 Ala. 551; Davis's case, 79 Ala. 20; Barnett's case, 89 Ala. 165; Jones's case, 100 Ala. 35.

68. PERJURY IN OTHER PROCEEDINGS OR CIVIL CASE. §5200 (3907), §5199 (3908).

A. B., on an application for a continuance in a civil action in the ——— court of ——— county, in which one C. D. was plaintiff and the said A. B. defendant, being duly sworn by the clerk of said court, who had authority to administer such oath, falsely swore, etc. (stat-

ing the facts), the matters so sworn to being material, and the oath of the said A. B. in relation to such matters, being willfully and corruptly false.

Smith's case, 103 Ala. 57; Walker's case, 96 Ala. 53; Hicks's case, 86 Ala. 30.

69. POISONING SPRING, ETC. §5329 (4076).

A. B. willfully or wantonly poisoned a spring of water in the yard of C. D., or a reservoir of water in the public square in the town of Tuskegee, etc.

70. RAPE. §5444 (3736).

A. B. forcibly ravished C. D., a woman, etc.

Myers's case, 84 Ala. 11.

71. RECEIVING OR CONCEALING STOLEN GOODS. §5054 (3794).

A. B. did buy, receive, conceal, or aid in concealing, one watch, of the value of —— dollars, the personal property of C. D., knowing that it was stolen, and not having the intent to restore it to the owner, against, etc.

Burney's case, 87 Ala. 80; Burrage's case, 113 Ala. 108.

72. REMOVING DEAD BODY FROM GRAVE. §4644 (4023).

A. B. removed from the grave the dead body of C. D. from wantonness, or for the purpose of dissection or sale.

73. RESISTING OFFICER IN EXECUTING PROCESS. §5463 (3974).

A. B. did knowingly and willfully oppose or resist C. D., the sheriff of said county, in attempting to serve or execute a writ of execution, called a fieri facias, issued by the clerk of the circuit court of said county (or as the case may be, describing the process generally).

Andrews's case, 78 Ala. 484.

74. RIOT. §5474 (3766).

A. B., C. D. and E. F., being unlawfully assembled, did demolish, pull down, or destroy, or begin to demolish, pull down, or destroy, a dwelling-house.

75. ROAD OVERSEER NEGLECTING DUTY. §5395 (4129).

A. B., an overseer of a road precinct, failed to discharge his duties as such overseer.

76. ROAD APPORTIONER NEGLECTING DUTY. §5395 (4129).

A. B., a road apportioner of an election precinct, failed to discharge his duties as such apportioner.

77. ROBBERY. §5479 (3742).

A. B. feloniously took a gold watch, of the value of —— dollars, the property of C. D., from his person, and against his will, by violence to his person, or by putting him in such fear as unwillingly to part with the same.

Thomas's case, 91 Ala. 34; Thompson's case, 106 Ala. 74; Reed's case, 88 Ala. 36.

78. SELLING, REMOVING, OR CONCEALING PERSONAL PROPERTY COVERED BY LIEN OR CLAIM. §4757 (3835).

A. B., with the purpose to hinder, delay, or defraud C. D., who had a lawful and valid claim thereto, under a written instrument, lien created by law for rent or advances, or other lawful and valid claim, verbal or written, did sell or remove personal property, consisting of one bale of cotton (or other property, as the case may be), of the value of ten dollars, the said A. B. having at the time a knowledge of the existence of such claim.

Upshur's case, 100 Ala. 2; Ellerson's case, 69 Ala. 1; Hill's case, 78 Ala. 1.

79. SELLING LIQUOR WITHOUT LICENSE, OR IN VIOLATION OF SPECIAL PROHIBITORY LIQUOR LAWS. §5076 (4036), §5077 (4037).

A. B., without a license as a retailer, did sell spirituous, vinous, or malt liquors; or, A. B. sold spirituous, vinous, or malt liquors without a license, and contrary to law, against, etc.

Sills's case, 76 Ala. 92; Boon's case, 69 Ala. 226; Powell's case, Ib. 10; Robertson's case, 100 Ala. 123; Cost's case, 96 Ala. 60; Bogan's case, 84 Ala. 449; Block's case, 66 Ala. 493; Williams's case, 91 Ala. 14.

80. SELLING LIQUOR TO MINORS OR INTEMPERATE PERSONS. §5078 (4038).

A. B. did sell or give spirituous, vinous, or malt liquors to C. D., a minor (or person of known intemperate habits, as the case may be).

Spigener's case, 62 Ala. 383; Tatum's case, 63 Ala. 147; Freiberg's case, 94 Ala. 91; Heath's case, 99 Ala. 179.

81. SELLING OR GIVING LIQUOR TO PERSON OF UNSOUND MIND. §5079 (4039).

A. B., who kept vinous, fermented, or spirituous liquor for sale, did knowingly sell, give, or deliver such liquor to C. D., a person who was, or reputed to be, of unsound mind.

82. SELLING, GIVING, OR LENDING PISTOL, OR BOWIE-KNIFE TO BOY UNDER EIGHTEEN. §5355 (4096).

A. B. did unlawfully sell, give, or lend a pistol or bowie-knife, or other knife of like kind or description, to C. D., a boy under eighteen years of age, against, etc.

83. SODOMY AND BESTIALITY, OR CRIME AGAINST NATURE. §4642 (4020).

A. B., against the order of nature, carnally knew C. D.; or A. B., against the order of nature, carnally knew a certain beast, to wit, a cow, against, etc.

84. SOLICITING ORDER FOR LIQUOR TO BE SHIPPED INTO PROHIBITION DISTRICT. §5087.

A. B., within the limits of a district in which the sale of spirituous, vinous, or malt liquors was prohibited by law, did solicit or receive from C. D. an order for spirituous, vinous, or malt liquors to be shipped or sent into such district.

85. STREETS OF TOWN OUT OF REPAIR; INDICTMENT AGAINST MUNICIPAL AUTHORITIES. §5384 (4118).

A. B., C. D., E. F., G. H., etc., corporate officers of the town of Gadsden, a town duly incorporated under the laws of this state, the inhabitants thereof being exempt from working on the public roads, did allow a street therein, known as —— street (or, if the street is not named, it may be described), to remain out of repair for more than ten days at one time, without a reasonable excuse therefor, against, etc.

Nowlin's case, 49 Ala. 41.

86. SUNDAY LAW, VIOLATIONS OF; KEEPING OPEN STORE, ETC. §5542 (4045).

A. B. unlawfully engaged in hunting or shooting (or gaming, or card-playing, or racing, as the case may be; or, being a merchant or shopkeeper, and not a druggist, kept open store, or did compel his child, or apprentice, or servant, in the alternative, as the case may be, to perform labor not the customary duties of daily necessity or comfort, or works of charity) on Sunday, against, etc.

87. TRAMP. §5629 (4048).

A. B. was a tramp.

88. SAME; FOR ENTERING A DWELLING-HOUSE, ETC., OR THREATENING, ETC. §5630 (4049).

A. B., being a tramp, did enter the dwelling-house, or other building of C. D., without the consent of the occupant thereof (or did willfully or maliciously injure, or threaten to injure, a person therein; or, A. B., being a tramp, did injure, or threaten to injure, the real or personal property of C. D., or did demand of or order C. D. to deliver or surrender to him an article of value, as the case may be).

89. USING FIREARMS WHILE FIGHTING IN PUBLIC PLACE. §5353 (4094).

A. B., while fighting at a militia muster (or in a street of the city of Mobile), or at a public place, used, or attempted to use a pistol (or gun, as the case may be), not in self-defense, etc.

90. VOLUNTARY ESCAPE BY SHERIFF. §4699 (3990).

A. B., while sheriff of said county, having the legal custody of one C. D., who was charged with burglary (or indicted for robbery, as the case may be), voluntarily permitted the said C. D. to escape.

91. VOTING ILLEGALLY. §4692 (4185).

A. B. voted more than once, or deposited more than one ballot as his vote for the same office (or, not being twenty-one years of age, unlawfully voted), at the last general election held in this state (or the kind of election may be designated, as the case may be), against, etc.

Gandy's case, 82 Ala. 61.

CHAPTER 162.

INQUESTS. 4924–4937.

4924 (4801) (3991) (4363) (812). **Process of holding coroner's inquest; jury of inquest summoned by coroner.**—When a coroner has been informed that a person has been killed, or suddenly died under such circumstances as to afford a reasonable ground for belief that such death has been occasioned by the act of another by unlawful means, he must forthwith make inquiry of the facts and circumstances of such death, by taking the sworn statement, in writing, of the witnesses having personal knowledge thereof; and if, upon such preliminary inquiry, the coroner is satisfied from the evidence that there is reasonable ground for believing that such death has been occasioned by the act of another, by unlawful means, he must forthwith summon a jury of six discreet householders of the county to appear before him forthwith at a specified place, and inquire into the cause of such death.

4925 (4802) (3992) (4364) (813). **Oath of jury.**—When five or more of the jurors appear, they must be sworn to inquire who the person was, and when, where, and by what means he came to his death; and to render a true verdict thereon, according to the evidence offered them, or arising from the inspection of the body.

4926 (4803) (3993) (4365) (814). **Witnesses and surgeons summoned.**—The coroner may issue subpœnas for witnesses, returnable forthwith, or at such time and place as he may appoint; he must summon and examine as a witness any person who, in his opinion, or that of any of the jury, has any knowledge of the facts; and he may also summon as a witness a surgeon or physician, who must, in the presence of the jury, inspect the body, and give a professional opinion as to the cause of the death.

4927 (4804) (3994) (4366) (815). **Service of subpœnas; proceedings against defaulting witnesses.**—The sheriff or any constable must serve the subpœnas, or they may be served by the coroner; and if any witness, being subpœnaed, fails to attend, the coroner must indorse on the subpœna his default, sign his name thereto, and return the same to the clerk of the circuit or city court of

the county, within five days thereafter; and such witness must be proceeded against in such court, in the name of the state, as if he was a defaulter therein; the indorsement of the coroner being presumptive evidence of the default.

4928 (4805) (3995) (4367) (816). **Witness refusing to answer, misdemeanor.**—Any witness, who refuses to answer any question in relation to the cause of such death, except on the ground that it may criminate himself, is guilty of a misdemeanor, and must be committed to jail by the coroner, unless he gives bail in the sum of five hundred dollars, to appear at the circuit or city court and answer such offense; and, on conviction thereof, must be fined not less than two hundred nor more than five hundred dollars, and may be imprisoned not exceeding three months.

4929 (4806) (4004). **Coroner may administer oaths.**—Coroners shall have the right to administer oaths to persons on preliminary examinations provided for by this chapter.

4930 (4807) (3996) (4368) (817). **Verdict of jury.**—After inspecting the body and hearing the evidence, the jury must render their verdict, and certify it by an inquisition in writing signed by them, setting forth who the person is, and when, where and by what means he came to his death; and, if the death was occasioned by the act of another, by unlawful means, who is guilty thereof; and if the person, means, or manner of his death, or the person by whose act he came to his death, are not discovered by the evidence, the inquisition must so state; and if there is no evidence tending to show that the deceased came to his death by the unlawful act of another, the inquisition must also state that fact.

4931 (4808) (3997) (4369) (818). **Inquest returned to court; witnesses recognized, etc.**—The inquisition thus taken must be returned by the coroner forthwith, together with the written statement under oath taken by him on the preliminary investigation, to the clerk of the circuit or city court of the county; and the coroner must also require all the material witnesses to enter into an undertaking to appear at the circuit or city court, if in session, and if not, at the next term thereof, and may require surety to such undertaking; and, on the failure of a witness to enter therein, may commit him until he enters into the same.

4932 (4809) (3998) (4370) (819). **Warrant of arrest against supposed criminal; arrest, commitment, etc.**—If the jury find that the deceased came to his death by the act of another, by unlawful means, the coroner may issue a warrant of arrest for such person, which may be executed in the same manner as provided in chapter 178, and the person, when arrested, must be brought before a magistrate of the county in which the inquest was held, who must proceed to examine the charge, and commit, bail, or discharge the defendant, as upon a warrant of arrest under the provisions of such chapter.

Warrant of arrest may be founded on coroner's inquest held by justice of peace.—Boynton's case, 77 Ala. 29.

4933 (4810) (3999) (4371) (820). **Money, etc., of deceased paid into county treasury; penalty.**—The coroner must, within thirty days after an inquest on a dead body, deliver to the county treasurer any money or other property which may be found on the body, unless claimed in the meantime by the legal representatives of the deceased; if he fails to do so, the treasurer may proceed against him for the amount or value thereof, on ten days' notice to him and his sureties, or against any of them served therewith, and recover the same, with twenty per cent. damages on the amount or value thereof.

4934 (4811) (4000) (4372) (821). **Same; how disposed of.**—Upon the receipt of the money by the treasurer, he must place it to the credit of the county. If it is other property, he must, within three months, sell it at the court-house of the county, at public auction, upon reasonable public notice, and must, in like manner, place the proceeds to the credit of the county.

4935 (4812) (4001) (4373) (822). **Same; paid to the legal representative of deceased.**—If such money in the treasury is demanded in six years by the legal representatives of the deceased, the treasurer must pay it to them, after deducting the fees of the coroner, expenses of sale, and five per cent. on the balance for the treasurer; or it may be paid at any time thereafter upon the order of the county commissioners.

4936 (4813) (4002) (4374) (823). **Compensation of surgeons and physicians.**—Any surgeon or physician, who, being duly subpœnaed, attends a coroner's inquest, examines the body, and gives a professional opinion thereon, is entitled to receive five dollars, with one dollar additional for each mile he may be compelled to travel in attending such inquest; to be collected out of the estate of the deceased, if solvent; and if insolvent, to be paid out of the county treasury.

4937 (4814) (4003) (4375) (824). **When inquest held by justice of the peace; fees.**—If the coroner is absent from the county, or is unable to act, any justice of the peace may hold an inquest on the body of any deceased person, under the rules and regulations in this chapter prescribed; and is entitled to the same compensation for his services that is by law allowed to the coroner.

Boynton's case, 77 Ala. 29.

CHAPTER 163.

INSANITY.

ARTICLE 1.—INSANITY AS A DEFENSE FOR CRIME; HOW PLEADED AND TRIED. 4938–4940.
2.—INQUISITION AND PROCEEDINGS IN REGARD TO INSANE PRISONERS. 4941–4945.

ARTICLE 1.

INSANITY AS DEFENSE FOR CRIME; HOW PLEADED AND TRIED.

Feb. 27, 1889, p. 742, §1.

4938. Presumption in favor of sanity; burden and measure of proof of insanity.—Every person charged with crime is presumed to be responsible for his acts, and the burden of proving that he is irresponsible is cast upon the accused. The defense of insanity in all criminal prosecutions shall be clearly proved to the reasonable satisfaction of the jury.

Insanity as a defense must be specially pleaded and is not available under the general plea of not guilty.—Perry's case, 87 Ala. 30; Maxwell's case, 89 Ala. 150; Walker's case, 91 Ala. 76; Ward's case, 96 Ala. 100. Presumption of sanity; burden and measure of proof as to insanity.—Parsons's case, 81 Ala. 577; Gunter's case, 83 Ala. 96; Maxwell's case, 89 Ala. 150.

Ib. §4.

4939. Insanity must be specially pleaded as a defense for crime. When the defense of insanity is set up in any criminal prosecution it must be by special plea, interposed at the time of arraignment and entered of record upon the docket of the court, which in substance shall be, "Not guilty by reason of insanity." Such plea shall not preclude the usual plea of the general issue, which shall not, however, put in issue the question of the irresponsibility of the accused by reason of his alleged insanity, this question being triable only under the special plea.

In the absence of such special plea, evidence as to sanity or insanity not admissible.—Ward's case, 96 Ala. 100. Nor argument based on insanity.—Walker's case, 91 Ala. 76. When special and general pleas submitted at same time, charges based on special plea, but requiring verdict of not guilty, are properly refused.—Maxwell's case, 89 Ala. 150.

Ib. §5.

4940. Verdict when special plea interposed.—If it shall appear from the evidence that the defendant did the act charged as constituting the offense, but that at the time of committing the act he was insane, the jury shall render a special verdict to the effect that the defendant is not guilty by reason of insanity; if the jury do not believe from the evidence that the defendant committed the act, or if they believe from the evidence that he is not guilty upon any other ground than his alleged insanity, they must return a general verdict of not guilty; otherwise, they must return a verdict of conviction.

Maxwell's case, 89 Ala. 150; Walker's case, 91 Ala. 76.

ARTICLE 2.

INQUISITION AND PROCEEDINGS IN REGARD TO INSANE PRISONERS.

4941. Inquisition in certain cases of felony; proceedings.—If any person charged with murder, rape, robbery, arson, or burglary, or any grade of these crimes, or any attempt to commit them, punishable capitally or by imprisonment in the penitentiary, be held in confinement under indictment, and the trial-court shall have reasonable ground to doubt his sanity, the trial of such person for such offense shall be suspended until a jury shall inquire into the fact of such sanity, such jury to be impaneled from the regular jurors in attendance for the week or from a special venire as the court may direct. If the jury shall find the accused sane at the time of their verdict, they shall make no other inquiry, and the trial in chief shall proceed. If they find that he is insane at that time, the court shall make an order remanding him to the insane hospital, where he must remain until he is restored to his right mind. When the superintendent of the hospital shall be of opinion that such person is so restored he shall forthwith, in writing, inform the judge and sheriff of such court of the fact, whereupon such person must be remanded to prison on an order of such judge, and the criminal proceedings resumed. In no event shall such person be set at large so long as such prosecution is pending, or so long as he continues to be insane. Feb. 27, 1889, p. 742, §§2, 3.

4942 (4816) (1488) (1060). **Inquisition upon alleged insane prisoner; further proceedings.**—If any person in confinement, under indictment, or for want of bail for good behavior, or for keeping the peace, or appearing as a witness, or in consequence of any summary conviction, or by an order of any justice, appears to be insane, the judge of the circuit court of the county where he is confined must institute a careful investigation, call a respectable physician and other credible witnesses, and, if he deems it necessary, may call a jury, and for that purpose he is empowered to compel attendance of witnesses and jurors; and if it be satisfactorily proved that the person is insane, the judge may discharge him from imprisonment and order his safe custody and removal to the hospital, where he must remain until restored to his right mind; and then, if the judge shall have so directed, the superintendent must inform the judge and sheriff, whereupon the person must be remanded to prison, and criminal proceedings be resumed, or he be otherwise discharged.

One indicted and enlarged on bail not "in confinement," as meant by statute.—Ex parte Trice, 53 Ala. 546. Jurisdiction vests in judge, not in court; notice to person affected indispensable; record must recite every fact, else judgment a nullity.—Ib. Fact of mental unsoundness of person on bail, endangering neighborhood property, gives judge no authority to confine prisoner in asylum.—Ib. Effect of insanity occurring after commission of offense.—See Jones's case, 13 Ala. 153; Marler's case, 67 Ala. 55. Admissibility of former evidence of witness who has since become insane.—Marler's case, 67 Ala. 55. Admissibility of record of proceedings under the statute.—Ib.

4943 (4815) (1487) (1059). **Court orders to hospital defendant acquitted on account of insanity.**—When a person has escaped in-

dictment, or been acquitted of a criminal charge on the ground of insanity, the court, being informed by the jury, or otherwise, of the fact, must carefully inquire and ascertain whether his insanity in any degree continues, and, if it does, shall order him in safe custody, and to be sent to the hospital.

4944 (4817) (1489) (1061). **Powers of county courts and justices in misdemeanors.**—Persons charged with misdemeanors, and acquitted on the ground of insanity, may be kept in custody and sent to the hospital in the same way as persons charged with crimes; and the county courts and justices of the peace have the same power in reference to persons charged before them with misdemeanors, as is bestowed upon the circuit courts in the two preceding sections.

4945. Expenses to be paid by the state; when and how state reimbursed.—The cost of removing an insane prisoner to and from the hospital under any of the provisions of this chapter must be defrayed by the state as in case of removal of prisoners from one county to another; and such cost, together with the expenses of such patient in the hospital, may be recovered by the state from such person, or his estate, or any relative who would have been bound to provide for and maintain him elsewhere.

CHAPTER 164.

JAIL. 4946–4966.

4946 (4535) (4486) (3784) (236). **Legal custody and charge of jail.**—The sheriff has the legal custody and charge of the jail in his county, and of all prisoners committed thereto (except in cases otherwise provided by law), and may appoint a jailer, for whose acts he is civilly responsible.

Jailer becomes sheriff's deputy.—Shields's case, 104 Ala. 38.

4947 (4536) (4487) (3785) (237). **Who may be confined in jail.** In addition to convicts sentenced to imprisonment in the county jail, the jail is used as a prison for the safe-keeping or confinement of the following persons: (1) Persons committed for trial for public offenses; (2) convicts sentenced to imprisonment in the penitentiary, until their removal thereto; (3) persons committed for contempt, or on civil process; (4) persons committed on failure to give security for their appearance as witnesses in any criminal case; (5) persons charged with, or convicted of a criminal offense against the United States; and (6) all other persons committed thereto by authority of law.

4948 (4537) (4495) (3795) (247). **Commencement of subsequent imprisonment on two or more convictions.**—When a convict is sentenced to confinement in the county jail on two or more convictions, the imprisonment on the second, and on each subsequent con-

viction, must commence at the termination of the imprisonment on the preceding sentence.

4949 (4538) (4488) (3786) (238). **Commitments and discharges filed and preserved.**—It is the duty of the sheriff, or of the jailer under his direction, to file in regular order, and safely preserve the process or order by which any prisoner is committed to jail, or discharged therefrom, or an attested copy of such process or order.

4950 (4539) (4489) (3787) (239). **Jail, prisoners, etc., delivered to successor.**—On the death, resignation, removal from office, or expiration of term of office, of any sheriff, or of any coroner acting as sheriff, the jail must be delivered over to his successor, or to the person authorized by law to take charge of it, together with the prisoners therein, the files of commitments and discharges, and everything belonging or appertaining to the jail.

4951 (4540) (4491) (3789) (241). **What prisoners kept separate.** Men and women, except husband and wife, must not be kept in the same room; and white and colored prisoners, before conviction, must also be kept separate and apart, if there be a sufficient number of apartments for that purpose.

4952 (4541) (4492) (3790) (242). **Support of prisoner furnished by himself or jailer.**—Any person committed to jail may furnish his own support, under such precautions as may be adopted by the jailer to prevent escapes; and the jailer must furnish a support to those prisoners who do not provide it for themselves.

4953 (4542) (4493) (3791) (243). **Necessary clothing, medicines, etc., to insolvent prisoners.**—Necessary clothing and bedding must be furnished by the sheriff or jailer, at the expense of the county, to those prisoners who are unable to provide them for themselves; and also necessary medicines and medical attention to those who are sick, when they are unable to provide them for themselves.

4954 (4543) (4494) (3792) (244). **Prisoners not allowed to receive spirituous liquors.**—No person confined in jail must, on any pretext whatever, be furnished with, or allowed to receive, any spirituous or vinous liquors, except on the written order of a physician, stating that such liquor is necessary for his health.

4955 (4544) (4496) (3796) (248). **Removal of prisoners on account of fire.**—When the county jail, or any building contiguous thereto, is on fire, and there is reason to apprehend that the prisoners may be thereby injured or endangered, the sheriff or jailer may remove them to a safe and convenient place, and confine them there so long as may be necessary to avoid the danger.

4956 (4545) (4497) (3797) (249). **Removal of prisoners in ill health.**—When the life or health of any prisoner, who is not confined under process from any court of the United States, may be seriously endangered by longer confinement in jail, and that fact is made to appear clearly to any circuit judge, or to the judge of the city, or county court of the county, such judge must, by an order in writing, direct the sheriff or jailer to remove him to some suitable place, as

near as may be to the jail, and there safely keep him until his health is sufficiently restored to authorize his recommitment to jail.

4957 (4546) (4498) (3798) (250). **Same; guards summoned.** When any prisoner or prisoners is or are removed from the jail under the provisions of either of the two preceding sections, the sheriff or jailer has authority, and it is his duty, to summon such guards as may be necessary to ensure their safe-keeping.

4958 (4547) (4499) (3799) (251). **When jail unsafe, guards summoned to prevent escapes.**—When the county jail is insufficient, and there is reason to apprehend an escape, the sheriff has authority, and it is his duty, to summon as many guards as may be necessary to prevent an escape.

4959 (4548) (4500) (3800) (252). **Same; commitment to nearest sufficient jail.**—In all criminal cases, either before or after conviction, and in cases of contempt, if it is shown to the court, judge, or committing magistrate, that the jail of the proper county is insufficient for the safe-keeping of the prisoner, or that there is no jail in the county, the commitment must be to the nearest sufficient jail; and the reason of such change must be entered on the minutes of the court, or stated in the warrant, or indorsed thereon, and signed by the magistrate; and the jailer of the county to which the commitment is made must receive and confine the prisoner on such commitment, or a certified copy of such order.

4960 (4549). **Notice of confinement of prisoner in another county.** When any person charged with the commission of any crime is arrested and confined in any county other than that in which he is triable, the sheriff having such person in custody shall at once notify the sheriff of the county in which such person is triable of the fact of such arrest and confinement; and, upon the receipt of such notice, the sheriff of the county last named shall apply to the proper authority for an order for the removal of such person to the jail of such county.

4961 (4550) (4501) (3801) (253). **Removal of prisoners from one jail to another.**—If the jail of any county is destroyed, or becomes insufficient or unsafe, or any epidemic dangerous to life is prevalent in the vicinity, or there be danger of rescue or lawless violence to any prisoner, any circuit judge, or the judge of the city or county court of the county, may, on the application of the sheriff, and proof of the fact, direct the removal of any prisoner or prisoners to the nearest sufficient jail in any other county; and it is the duty of such judge, in such case, to make an indorsement on the order or process of commitment, stating the reason why such removal is ordered, and to date and sign such indorsement.

4962 (4551) (4502) (3802) (254). **Guards summoned; escape of such prisoners.**—When it becomes necessary to remove any prisoner from the jail of one county to another, in any case by law provided, the sheriff, or other officer having charge of such prisoner, has authority, and it is his duty, to summon such guards as may be necessary to prevent an escape.

4963 (4552) (4503) (3803) (255). **List of prisoners certified by sheriff to judge.**—It is the duty of the sheriff, on the first day of each term of the circuit or city court of his county, to make out and deliver to the presiding judge a certified list of the names of all the prisoners confined in the jail, and of the offenses with which they are charged, or of which they have been convicted.

Miller's case, 110 Ala. 85.

4964 (4553) (4504) (3804) (256). **United States prisoners.**—The sheriff or jailer must, if the jail of the county is sufficient, receive into his custody any person committed under any criminal charge or offense against the United States, and safely keep such prisoner, according to the order or process of commitment, until duly discharged by law; and he is liable to the same penalties for the escape of such prisoner as for the escape of a prisoner committed under the authority of this state.

4965 (4554) (4505) (3805) (257). **Same; marshal liable for fees.** The United States marshal must become individually responsible to the jailer for all the jail fees of any prisoner committed under the authority of the United States, as well as the fifty cents per month for the use of the jail for each prisoner, according to the provisions of the resolution of the congress of the United States, adopted on the twenty-second day of September, A. D. 1789.

4966 (4555). **Sheriff to report prisoners committed and discharged.**—When a prisoner is committed to the county jail, it is the duty of the sheriff of such county, in person or by deputy, to report in writing to the clerk of the city or circuit court of such county, within ten days next succeeding the commitment, the name of such prisoner, the day of his entering such jail, and by what authority, and upon what charge committed; and when a prisoner is discharged from, or otherwise leaves such jail, the sheriff shall report to such clerk, within two days next succeeding, the name of such prisoner and by what authority and when he so left or was discharged.

CHAPTER 165.

JURISDICTION OF PERSONS AND OFFENSES. 4967–4975.

4967 (3703) (4631) (3940) (392). **All persons amenable, except for offenses exclusively cognizable in United States courts.**—Every person, whether an inhabitant of this state, or of any other state or country, is liable to punishment by the laws of this state for an offense committed therein, except when it is by law exclusively cognizable in the United States courts.

4968 (3716) (4632) (3941) (393). **Generally, in county where committed.**—The local jurisdiction of all public offenses, unless it is otherwise provided by law, is in the county in which the offense was committed.

4969 (3717) (4633) (3942) (394). **Offense commenced elsewhere, but consummated here.**—When the commission of an offense, commenced elsewhere, is consummated within the boundaries of this state, the offender is liable to punishment here, although he was out of the state at the commission of the offense charged, if he consummated it in this state through the intervention of an innocent or guilty agent, or by any other means proceeding directly from himself; and the jurisdiction in such case, unless otherwise provided by law, is in the county in which the offense was consummated.

Crow's case, 18 Ala. 545.

4970 (3718) (4634) (3943) (395). **Offense commenced here, but consummated elsewhere.**—When the commission of an offense, commenced here, is consummated without the boundaries of this state, the offender is liable to punishment therefor; and the jurisdiction in such case, unless otherwise provided by law, is in the county in which the offense was commenced.

Prosecution for homicide may be maintained here, in the county where the fatal blow was struck, although the death, ensuing within a year and a day, occurred in another state.—Green's case, 68 Ala. 40.

4971 (3719) (4635) (3944) (396). **Offense committed partly in different counties.**—When an offense is committed partly in one county and partly in another, or the acts, or effects thereof, constituting, or requisite to the consummation of the offense, occur in two or more counties, the jurisdiction is in either county.

Enticing away laborer, where master lives in one county and servant in another.—Prestwood's case, 87 Ala. 147. Does not apply to county in which parties agree to live in adultery, when committed in another.—Brown's case, 108 Ala. 18.

4972 (3720) (4636) (3945) (397). **Offense committed on or near county boundary.**—When an offense is committed on the boundary of two or more counties, or within a quarter of a mile thereof, or when it is committed so near the boundary of two counties as to render it doubtful in which the offense was committed, the jurisdiction is in either county.

Confined to offenses common to each of the adjoining counties in all their ingredients and penalties.—McKay's case, 110 Ala. 19. Does not limit jurisdiction over navigable streams between counties, conferred by section 1400 (27). Jackson's case, 90 Ala. 590; Dickey's case, 68 Ala. 508.

4973 (3721) (4637) (3946) (398). **Forcible marriage, decoying child, kidnapping, etc.**—For the offenses specified in sections 4301 (3743), 4302 (3744), 4303 (3745) and 4304 (3746) of this Code, the jurisdiction is in the county in which the offense was committed, or in any other county into or through which, in the commission of the offense, the person upon whom it was committed may have been carried.

4974 (3722) (4638) (3947) (399). **Bringing stolen property into this state.**—When property is stolen elsewhere and brought into this state, the jurisdiction is in any county into which the property is brought.

4975 (3723) (4639) (3948) (400). **Carrying stolen property in-**

to another county.—When property is stolen in one county, and carried into another, the jurisdiction is in either county.

Aaron's case, 39 Ala. 684; Whizenant's case, 71 Ala. 383. The statute only an affirmation, not an enlargement of the common law.—Smith's case, 55 Ala. 59; Crow's case, 18 Ala. 545. Hence, statutory offense of stealing from a store or dwelling cannot be prosecuted in county where goods carried, though offense may be there prosecuted as a simple larceny.—Smith's case, 55 Ala. 59; Kidd's case, 83 Ala. 58. To authorize conviction in county where goods carried, thief must have had control of property in such county.—Lucas's case, 62 Ala. 26; Whizenant's case, supra.

CHAPTER 166.

JURORS AND JURIES.

ARTICLE 1.—THE JURY COMMISSION; HOW CONSTITUTED AND PAID. 4976–4981.
2.—QUALIFICATION, SELECTION AND EXEMPTION OF JURORS. 4982–4988.
3.—DRAWING AND SUMMONING JURORS IN GENERAL. 4989–4997.
4.—SPECIAL JURIES, AND REGULAR JURIES AT SPECIAL TERMS. 4998–5002.
5.—SPECIAL AND PETIT JURIES IN CAPITAL CASES. 5003–5009.
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7.—PETIT JURY AND TALESMEN; ARRANGING, SWEARING AND CHALLENGING. 5011–5021.
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10.—DISCLOSING INDICTMENT AND TESTIMONY GIVEN BEFORE GRAND JURY. 5047, 5048.

ARTICLE 1.

THE JURY COMMISSION; HOW CONSTITUTED AND PAID.

4976. Members of court of county commissioners or board of revenue constituted jury commission.—The county commissioners of each county, or members of the board of revenue in such counties as have such boards, not including the judge of probate, are constituted a board of jury commissioners for the selection and drawing of grand and petit jurors. Feb. 28, 1887, p. 151, §1.

4977. Special oath to be taken by commissioners.—Such commissioners shall, in addition to their official oath as members of the court of county commissioners or board of revenue, take an oath faithfully to discharge the duties required of them by law as jury commissioners, to keep secret the counsel of themselves and their associates and not to disclose the name of any juror drawn until the venire shall have been issued for such juror; which oath shall be in writing and subscribed by them respectively as a part of their official oath. Ib.

Ib. §2. **4978. Place of meeting; sessions to be secret.**—Such commissioners shall hold their meetings at the court-house or other place provided by law for the sitting of the court of county commissioners or board of revenue; and when sitting for the transaction of business no other person than the commissioners must be present.

Ib. §7. **4979. Quorum.**—A majority of such commissioners shall constitute a quorum.

Ib. **4980. President elected at each meeting.**—Such commissioners shall, at each meeting, select one of their number president of the board to preside at such meeting, and he shall continue in such office until the next meeting of the board.

Ib. §1. **4981. Compensation; how paid.**—Each jury commissioner while engaged in the discharge of his duties as such shall receive, as compensation for his services, the same pay as a county commissioner or member of the board of revenue, which shall be paid by the county treasurer on the certified statement of the president of the board showing the amount due such commissioner.

ARTICLE 2.

QUALIFICATION, SELECTION AND EXEMPTION OF JURORS.

Feb. 28, 1887, p. 151, §3. As amended Feb. 28, 1889, p. 77, §1. **4982. List of competent and qualified persons selected from county; certified copy deposited with judge of probate.**—The commissioners must, as often as may be necessary in order to carry out the purposes of this chapter, select from the male residents of the county over twenty-one and under sixty years of age, the names of such persons, not exempt from jury duty, as in their opinion are fit and competent to discharge the duties of grand and petit jurors with honesty, impartiality and intelligence, and are esteemed in the community for their integrity, good character and sound judgment; the commissioners shall prepare a list of names so selected, stating thereon the place of residence and occupation of each person, if known to them, and shall file a certified copy of such list, in a sealed envelope, in the office of the judge of probate within five days after making such selection; and the judge of probate shall keep such list securely and not allow the seal of the envelope to be broken, or such list to be inspected by any one, save the jury commissioners, unless under an order of the judge of the circuit, city or criminal court of the county.

What a mere immaterial irregularity.—Cross's case, 63 Ala. 40. A man must be a citizen, not a foreigner or alien.—Judson v. Eslava, Minor, 2; Primrose's case, 3 Ala. 546; Boyington's case, 2 Port. 100. Citizen must not be left off jury because of race or color.—Green's case, 73 Ala. 26.

Feb. 28, 1887, p. 151, §4. **4983. Name, residence and occupation written on separate slips, folded and put in a box.**—When such list is completed the commissioners must write the name of each person therein contained, with his place of residence and occupation if shown by the list, on a separate piece of paper, and must fold or roll up such

pieces of paper as near as may be in the same manner, so that the name may not be visible, and deposit the same in a box, which must be secured by sufficient lock and seal.

4984. Commissioners must not select persons exempt or incompetent.—The commissioners must, as far as possible, guard against selecting any person exempt by law from jury duty, or who is incompetent, or who is a habitual drunkard, or who is afflicted with a permanent disease, or who, from any other cause, is not a fit and proper person to serve as a juror. Ib. §16.

4985. When new lists made and box refilled.—Whenever the names in the box are exhausted or so far depleted that they will probably be exhausted at the next drawing of jurors, the commissioners must proceed to make and certify a new list and deposit the names in the box, in all respects as provided in this article; and if at any time when the commissioners meet to draw juries the names in the box shall be exhausted, they may suspend the drawing and provide the necessary list of names and place the same in the box and proceed to complete the drawing. Ib. §12.

4986 (4301) (4734) (4064) (514). **Persons exempt from jury duty.**—The following persons are exempt from jury duty, unless by their own consent: Professors and students of universities and colleges; teachers and pupils of academies and common schools; ministers in charge of churches; judges of the several courts; attorneys at law during the time they practice their profession; practicing physicians; practicing dentists; consular agents of foreign governments; officers of the United States; officers of the executive department of the state government; sheriffs and their deputies; clerks of courts and coroners; county commissioners; justices of the peace and constables, during their continuance in office; keepers of public mills, ferries, toll-bridges and toll-gates; the officers of any railroad or other road constructed under the authority of this state, whose duties would materially interfere with serving on juries; the officers and crew of any steamboat navigating the rivers of this state; members of incorporated fire companies; officers of the penitentiary; the superintendent and physician of the insane hospital, and his assistants; all mail contractors, mail agents and public-stage drivers; one druggist in a town or village having but one drug-store; every commissioned officer, non-commissioned officer, musician and private, during the time he is a member of the Alabama state troops; and all township trustees of public schools. Feb. 10, 1891, p. 715. Feb. 26, 1887, p. 67.

Exemption from jury service subject to legislative regulation or repeal. Dunlap's case, 76 Ala. 460. Exemption (in this case of over-age) is a personal privilege, which juror may waive, and not a disqualification.—Spigener's case, 62 Ala. 383; Williams's case, 67 Ala. 183. Coroner is competent juror, though may claim privilege not to serve.—Jackson's case, 74 Ala. 26. Court not authorized to discharge person regularly summoned on his simple statement that he "is a fireman," without other proof of his right to claim benefit of statutory exemption of "members of incorporated fire companies."—Phillips's case, 68 Ala. 469. Party claiming exemption must prove it.—Ib. The claim of exemption is addressed to the court, and may be shown on voir dire of juror.—King's case, 90 Ala. 612. Member of state troops exempt.—Ib.; Simon's case, 108 Ala. 27.

4987 (4302) (4735). **Exemptions on account of age made known by affidavit.**—Any person selected as a grand or petit juror, who is exempt on account of age, may make known his exemption by affidavit, setting forth the facts constituting such exemption, which he may forward to the sheriff, who shall file it in the court.

4988 (4303) (4741). **Incompetency of jurors to serve more than one week in each year; exceptions.**—No person shall be competent to serve on a petit jury in any county in this state for more than one week in any year, unless actually engaged in the trial of a case submitted to them before the expiration of their week of service, in which case it shall be lawful for them to continue its consideration until they render a verdict, or are discharged by the court; but in those counties in which there is a city court, persons may serve one week in each year in the city court, in addition to the week in the circuit court; nor shall any person serve as a grand juror for more than one term consecutively in any county in this state during any one year, whether in the city, circuit, or criminal court of such county; and it is hereby made the duty of the court to see, before any person is sworn as a juror, that he is not incompetent under the provisions of this section; but this section shall not apply to such persons as may be specially summoned to serve as jurors in a capital case, or to jurors summoned to attend the coroner on his inquest, but shall be held to apply to all talesmen in civil and criminal cases, as well as to the regular panel of jurors, and to all juries which may be summoned to pass upon issues of fact in proceedings in the courts of probate and courts of chancery, and of justices of the peace.

It is no ground for quashing venire that some of the jurors have served on juries within twelve months.—Jones's case, 104 Ala. 30; Arp's case, 97 Ala. 5.

ARTICLE 3.

DRAWING AND SUMMONING JURORS IN GENERAL.

Feb. 28, 1887, p. 151, §4.

4989. Jurors drawn for ensuing year; slips destroyed.—On the next day after the adjournment of the last regular term of the court of county commissioners or session of the board of revenue held in each year, or as soon thereafter as practicable, the commissioners must proceed to draw from the jury-box a grand jury for each regular term of any court to be held during the next ensuing year in the county for which a grand jury is required by law, not less than fifteen nor more than twenty-one persons for each grand jury, to be composed of persons duly qualified to serve as grand jurors; and next, the names of the requisite number of persons to serve as petit jurors for each of such courts, allowing not more than thirty-six nor less than thirty persons for each week of the term prescribed by law, or, if the term is unlimited, for each week during which, in the opinion of the clerk of the court, a jury will be required; and the juries for each week shall be drawn separately and successively, and every piece of paper on which is written the name of the person so drawn must be destroyed.

4990. Sealed lists deposited with clerk.—The commissioners shall prepare a list of the names of the persons drawn as grand jurors, and a list of the persons drawn as petit jurors for each week of each term separately and envelope and seal the same with an indorsement on the outside of the package showing the contents thereof, and deliver the same to the clerk of such court, who shall retain such package in his possession, without breaking the seal or opening the same, until thirty days before the term of the court for which such jurors are drawn. Ib. §5.

4991. Copy of each list to be deposited in the jury-box. When the drawing has been completed and the lists of grand and petit jurors made out as provided in the preceding section, the commissioners must make a copy of each of such lists and deposit such copies in the box from which the names are drawn. Ib. §6. As amended Feb. 28, 1889, p. 77, §4.

4992. Box locked and sealed and deposited with judge of probate; key with county treasurer.—When the copies of the lists have been deposited in the jury-box as provided in the preceding section, such box must be securely locked and sealed and deposited in the office of the judge of probate, and the president of the board shall deposit the key to such box with the county treasurer who shall keep the same; but the judge of the circuit, city or criminal court shall have access to such box and key in order to compare the venire issued by the clerk with the copy of the list furnished to the clerk. Ib.

4993. Venire for grand and petit jurors issued by clerk.—At least twenty days and not more than thirty days before the term of the court for which such lists are drawn, the clerk of the court shall open the package containing such lists and issue an order in writing to the sheriff commanding him to summon the persons drawn as grand jurors to appear and serve in that capacity, and a similar order for the persons drawn as petit jurors, specifying in the order the full name, place of residence and occupation of each person, where known, and the particular week for which each petit juror is to serve. Ib. §5.

Seal of clerk not required.—Maher's case, 1 Port. 265.

4994 (4311) (4745) (4073) (523). **Executed and returned; when and how.**—The orders for the summons of jurors, provided for in the preceding section, must be executed by the sheriff, or other person acting in his place, by giving personal notice to each person, or by leaving a written notice at the place of his residence with some member of his family, or some person residing in the same house, three days before the day appointed for the commencement of the court; and must be returned to the clerk of the court from which it issued, with the proper return thereon, by the day appointed for the meeting of the court.

It is not material whether the writ of venire facias be directed to "any sheriff of the State of Alabama" or to the sheriff of the particular county, the writ being executed and returned by the proper officer.—Steadman's case, 7 Port. 495; Phillips's case, 2 Ala. 297. Presumptions after plea and verdict that law was complied with, etc.—Williams's case, 3 Stew. 454.

Feb. 28, 1887, p. 151.

4995. Sheriff negligently failing to summon juror guilty of contempt; punishment.—Any sheriff who negligently fails to summon any person whom he is commanded to summon as a juror is guilty of a contempt of court, and must be, by the court, fined not more than one hundred dollars for each person not summoned, and may also be imprisoned for not more than ten days. The return of any such person not found is prima facie evidence of such negligence on the part of the sheriff, and he shall be so punished by the court unless he shows good cause to the contrary.

4996 (4312) (4746). **Substitutes prohibited.**—No sheriff, deputy-sheriff, bailiff, or other officer, charged with the summoning of any jury, must accept or receive any substitute for any person who may be drawn to serve, or whom he may be directed to summon as a juror, but he must serve the person drawn or directed.

4997 (4314) (4759) (4086) (536). **What provisions directory merely.**—The provisions of this chapter in relation to the selection, drawing and summoning of jurors are merely directory; and juries selected, drawn and summoned, whether at an earlier or later day, must be deemed legal, and possess the power to perform all the duties belonging to grand and petit juries respectively; and no objection can be taken to any venire facias for a petit jury, except for fraud in drawing or summoning the jurors.

Section (prior to addition of last clause) construed.—Bales's case, 63 Ala. 30.

ARTICLE 4.

SPECIAL JURIES, AND REGULAR JURIES AT SPECIAL TERMS.

4998 (4316) (4761) (4088) (538). **Special juries organized in default of regular.**—If, in consequence of any neglect on the part of the jury commissioners, or from any other cause, no grand or petit jury is returned to serve at any term of the court, or no petit jury summoned for any week thereof, the court may, by an order entered on the minutes, direct the sheriff forthwith to summon eighteen persons qualified to serve as grand jurors, and such number as the court may direct to serve as petit jurors; and the persons so summoned, failing to attend, are subject to the same penalties as if they had been regularly drawn and summoned, to be recovered in the same manner; the court may supply any deficiency, as in other cases, and a jury thus organized is in all respects legal.

On failure of legal juries, for any cause, court may organize juries under this section.—Kemp's case, 89 Ala. 52; Stewart's case, 100 Ala. 1; Hester's case, 103 Ala. 83; Wilkins's case, 112 Ala. 55. What sufficient order.—Battle's case, 54 Ala. 93.

4999. Same; when venire quashed or regular jury discharged. If, for any cause, a challenge to the array or a motion to quash the venire is sustained, the court may order the summoning of a grand or petit jury, or both, as provided in the preceding section; and if,

by reason of the discharge of the regular juries for the week, or any other cause, the services of a jury are required to expedite the business of the court, such jury may be supplied as provided in the preceding section.

See note to preceding section.

5000 (4317) (4757) (4084) (534). **Special grand jury at regular term.**—When any indictable offense is committed during the session of the court, and after the grand jury has been discharged, the court may, in its discretion, cause an order to be entered on the minutes commanding the sheriff forthwith to summon eighteen persons possessing the requisite qualifications of grand jurors; which order the sheriff must immediately execute, and the persons summoned by him must attend, and, if required, serve as grand jurors under the same penalties as are by law prescribed for persons regularly drawn and summoned as grand jurors; and from the persons so attending, with such others as may be necessary to supply any deficiency (to be summoned and drawn as in other cases), a special grand jury must be organized, sworn and charged, as in other cases; and it is the duty of such special grand jury to investigate the offense, and to proceed thereon as a regular grand jury.

Except as here provided, the court has no authority to organize two grand juries at same term.—O'Bryan's case, 91 Ala. 16; O'Bryne's case, 51 Ala. 25.

5001 (4318) (4758) (4085) (535). **Grand jury at special term.** A grand jury may be organized at any special term of the circuit or city court, whenever, in the opinion of the presiding judge, the public good requires it; such grand jury to be organized in the same manner, and its proceedings to be governed in all respects by the same rules as by law provided for a grand jury organized at a regular term of the court.

Power to organize grand jury at special term.—Floyd's case, 55 Ala. 61. See also as to how jurors for special term (of city court) may be drawn.—Levy's case, 48 Ala. 171; Taylor's case, Ib. 180. And when motion to quash venire properly overruled in such case.—Levy's case, supra. Indictment found at special term and proceedings.—Harrington's case, 36 Ala. 236; Aaron's case, 39 Ala. 684.

5002. Grand and petit jurors for special or adjourned term. When a special or adjourned term of any court in which a jury is required, is ordered, the clerk of the court shall forthwith notify the jury commissioners, who shall meet and draw the grand and petit juries, one or both, as may be ordered by the judge of such court, who may direct the number of petit jurors to be drawn; and the commissioners shall furnish a list of the names so drawn to the clerk of the court at least twenty days before the term, in the same manner as for a regular term; and the clerk shall issue to the sheriff the order for summoning such grand and petit jurors as for a regular term, and the sheriff is subject to the same penalties for failing to summon such jurors as for failing to summon jurors to a regular term.

Feb. 28, 1887, p. 151, §6. As amended Feb. 28, 1889, p. 77, §4.

ARTICLE 5.

SPECIAL PETIT JURIES IN CAPITAL CASES.

Feb. 28, 1887, p. 151, §11.

5003. Court may fix trial of capital case for any subsequent day of term.—The court may, on any day of the term, fix the time for the trial of any capital case or cases for any subsequent day of the term.

Record must affirmatively show order fixing time for trial.—Spieer's case, 69 Ala. 159. Also personal presence of prisoner at such time.—Sylvester's case, 71 Ala. 17.

Feb. 28, 1887, p. 151, §10.

5004. Special jury in capital case; how drawn and summoned. When any capital case or cases stand for trial, the court shall, at least one entire day before the same are set for trial, cause the box containing the names of jurors to be brought into the court-room, and after having the same well shaken, the presiding judge shall then and there publicly draw therefrom not less than twenty-five nor more than fifty of such names for each capital case, a list of which shall be immediately made out by the clerk of the court and an order issued to the sheriff to summon the persons so drawn to appear upon the day set for trial, in like manner and under like penalties as he is required to summon grand and petit jurors. If the names in the jury-box should be exhausted before the completion of the drawing of such special jurors, the court shall direct the sheriff to summon from the qualified citizens of the county, the specified number of persons necessary to complete the number of special jurors ordered by the court.

A conviction of murder in the second degree operates an acquittal of the higher offense and, if pleaded, dispenses with the necessity of a special jury for a subsequent trial.—DeArman's case, 77 Ala. 10; Jackson's case, 78 Ala. 471. But if not so pleaded, special venire necessary.—Jordan's case, 81 Ala. 20. (See circuit-court rule 31, and citations thereto, Vol. I., p. 1200.) It is the province of the court to determine, within the limits, the number of jurors.—Blevins's case, 68 Ala. 92; Hubbard's case, 72 Ala. 164; Clark's case, 87 Ala. 71. When venire properly provided and served, defendant not entitled to a new venire because of continuance to a subsequent day or week of the term.—Thomas's case, 94 Ala. 74. When two or more capital cases are set for trial on same day, statute contemplates but one special venire for all.—Chamblee's case, 78 Ala. 466. Excusing jurors before day set for trial.—Fariss's case, 85 Ala. 1; Maxwell's case, 89 Ala. 150; Moseley's case, 107 Ala. 74. When juror engaged in considering another case.—Cole's case, 106 Ala. 76; Dorsey's case, 107 Ala. 157. When juror becomes ill before indictment read.—Yarbrough's case, 105 Ala. 43. When, after trial entered upon, juror becomes ill. Webb's case, 100 Ala. 47. When juror's wife becomes ill.—Hawes's case, 88 Ala. 37. Special venire at special or adjourned term.—Martin's case, 77 Ala. 1; Ward's case, 78 Ala. 441; Daughdrill's case, 113 Ala. 7.

Ib. §§10, 11.

5005. What constitutes venire for the trial of capital case. When the day set for the trial of a capital case or cases is a day of the same week in which the special jurors are drawn as provided in the preceding section, the special jurors so drawn, together with the panel of petit jurors organized for the week, shall constitute the venire from which the jury or juries to try such case or cases shall be selected; and when the day set for the trial is a day of a subsequent week of the term, the special jurors so drawn, together with the jurors drawn and summoned for such subsequent week, shall constitute such venire.

No ground of objection that some of the *special* jurors are not summoned. Parsons's case, 81 Ala. 577; Webb's case, 100 Ala. 47. As to *regular* jurors, venire served on defendant should contain only the names of those drawn *and summoned;* or, when order for special jury made same week of day set for trial, only the names of those *in attendance.*—Lee's case, 55 Ala. 259; Floyd's case, 55 Ala. 61; Jackson's case, 77 Ala. 18; Morrison's case, 84 Ala. 405; Goley's case, 89 Ala. 82; Thomas's case, 94 Ala. 74; Ryan's case, 100 Ala. 105; Burton's case, 107 Ala. 108, 133 (head-note misleading). Motion to quash venire must be made before trial entered upon.—Thomas's case, 94 Ala. 74; Ryan's case, 100 Ala. 105. When venire quashed on motion of solicitor, made before service.—Wilkins's case, 112 Ala. 55.

5006 (4321) (4875) (4174) (622). **Penalty on defaulting juror.** Any person summoned as a juror under the provisions of the last section, who fails to attend, or refuses to serve, must be fined not less than fifty dollars, which may be reduced by the court, if the circumstances justify reduction; such fine to be collected and applied in the same manner as fines imposed on jurors in other cases.

5007 (4322) (4876) (4175) (623). **Mistake in juror's name no cause to quash or continue; others substituted.**—A mistake in the name of any person summoned as a juror for the trial of a capital offense, either in the venire or in the list of jurors delivered to the defendant, is not sufficient cause to quash the venire, or to delay or continue the trial, unless the court, in its discretion, is of opinion that the ends of justice so require; but the court must in such case direct the names of such persons to be discarded, and others to be forthwith summoned by the sheriff, from the qualified citizens of the county, to supply their places; and the persons so summoned shall be disposed of in the same manner as if they had been summoned in the first instance.

No objection to venire on account of disqualification of jurors summoned. Roberts's case, 68 Ala. 515; Field's case, 52 Ala. 348. Summoning less number than named in venire; effect of duplicating name in the list.—Roberts's case, 68 Ala. 515. Mistake in names of jurors not sufficient ground to quash venire. Roberts's case, 68 Ala. 156; Floyd's case, 55 Ala. 61; Rash's case, 61 Ala. 89; Fields's case, 52 Ala. 348; Hall's case, 51 Ala. 9; Johnson's case, 47 Ala. 10; Hubbard's case, 72 Ala. 164; Jackson's case, 76 Ala. 26; Williams's case, 81 Ala. 1; McKee's case, 82 Ala. 32; Gibson's case, 89 Ala. 121; Jones's case, 104 Ala. 30.

5008 (4323) (4877) (4176) (624). **Substitutes peremptorily challenged, but no list served.**—The defendant is not entitled to a list of the persons summoned under the provisions of the last section, but may peremptorily challenge any of them, if drawn on the jury for his trial, in addition to the other peremptory challenges allowed him by law.

5009 (4324) (4878) (4177) (625). **Manner of drawing jury; talesmen.**—On the trial of a person charged with a capital offense, the names of the jurors summoned for his trial, as well as the names of the regular jurors in attendance, must be written on slips of paper, folded or rolled up, placed in a box, or some substitute therefor, and shaken together; and such officer as may be designated by the court must, in his presence, draw out such slips, one by one, until the jury is completed; if all such slips are drawn, and the jury is not made up, the court must direct the sheriff to summon, from the qualified citizens of the county, twice the number of persons required to complete the jury, whose names are also to be written on slips of paper, deposited and drawn as herein prescribed; and if

Feb. 28, 1887, p. 151, §10.

such number is exhausted, the same proceedings must be had until the jury is complete.

Discretionary with court to have names of jurors called from clerk's desk or outside.—Hall's case, 51 Ala. 9; Waller's case, 40 Ala. 325. Court not obliged to send for absent juror at defendant's request; but otherwise, if such juror in jail.—Johnson's case, 47 Ala. 10. What not error, where four of jurors in the venire, were engaged as jurors in the trial of another cause at the time copy was served on prisoner.—Redd's case, 69 Ala. 255. Name omitted from box by mistake may be replaced and drawn before talesmen are summoned.—Morrison's case, 84 Ala. 405. Order for talesmen need not appear of record; may be given orally.—Morrison's case, 84 Ala. 405.

ARTICLE 6.

DUTY OF COURT TO ASCERTAIN QUALIFICATIONS BEFORE SWEARING JURORS.

5010 (4325) (4760) (4087) (537). **Duty prescribed.**—It is the duty of the court, before administering the oath prescribed by law to any grand, petit, or tales juror, to ascertain that such juror possesses the qualifications required by law; and the duty required of the court by this section shall be considered imperative.

When objection that court failed to ascertain qualifications of jurors comes too late.—James's case, 53 Ala. 381. See Finley's case, 61 Ala. 201. Not essential that record should show a compliance with this section; presumption that court did its duty, and its judgment upon them a discretion not revisable. James's case, supra. Court may excuse juror who cannot understand the English language.—Long's case, 86 Ala. 36.

ARTICLE 7.

PETIT JURY AND TALESMEN; ARRANGING, SWEARING AND CHALLENGING.

5011 (4326) (4763) (4090) (540). **Petit jurors arranged for business.**—To dispose of the petit jurors for the transaction of business, the clerk must, on the day on which they are summoned to attend, prepare by lot a list of their names; the first twelve must be sworn and called the first jury; the next twelve must then be sworn and called the second jury; and if there are any more petit jurors in attendance, they may be placed on a third jury, or put on either of the other juries, or excused for the term, as the court may direct. If a sufficient number of the persons summoned as petit jurors do not attend to constitute two juries, or, if for any cause the number is reduced below twenty-four, the court shall order the sheriff to summon from the qualified citizens of the county, a sufficient number to complete the two juries; and the jurors may be transferred from one jury to another, as the convenience of the court, or the dispatch of business requires.

1887, p. 151, §9.

Evans's case, 109 Ala. 11.

5012 (4327) (4764) (4091) (541). **Talesmen.**—When, by reason of challenges, or any other cause, it is rendered necessary, the court may cause petit jurors to be summoned from the qualified citizens of the

county to supply any deficiency on a regular jury, or to form one or more entire juries, as the occasion may require; such jurors are called talesmen, and must not be compelled to serve longer than the day for which they were respectively summoned, unless detained longer in the trial of an issue, or the execution of a writ of inquiry, submitted to the jury of which they are respectively members, or unless they are resummoned; and any such jurors, failing to attend, or withdrawing without leave of the court before the expiration of his term of service, may be fined twenty dollars by the court, for which a conditional judgment may be entered, to be made absolute as in the case of regular jurors.

When defendant requests court to order more than necessary number of talesmen, he cannot afterward object to such order.—Allen's case, 74 Ala. 557. Order for talesmen may be given orally, and need not appear of record.—Morrison's case, 84 Ala. 405.

5013 (4328) (4765) (4092) (542). **Oath of petit juror.**—The following oath must be administered by the clerk, in the presence of the court, to each of the petit jurors: "You do solemnly swear (or affirm, as the case may be) that you will well and truly try all issues, and execute all writs of inquiry, which may be submitted to you during the present term (or week, as the case may be), and true verdicts render according to the evidence—so help you God;" and the same oath must be administered to the talesmen, substituting the word "day" for "term."

The presumption is that the correct oath was administered, when it appears from the recital in the judgment-entry that the jury were "duly sworn," or sworn "according to law," unless it also appears that a substantially different or defective oath was administered.—See Allen's case, 71 Ala. 6; Storey's case, Ib. 335, and the cases therein cited. It is the safer practice for the judgment-entry to recite simply that the jury "was sworn according to law," not setting out the oath.—Roberts's case, 68 Ala. 515; Allen's case, 71 Ala. 6; Storey's case, Ib. 335. See also Cary's case, 76 Ala. 78; Peterson's case, 74 Ala. 34; Johnson's case, Ib. 537. (But the succeeding section relieves it of error, unless record shows objection was made.) Where special jury is impaneled, better practice to swear juror separately, as he is selected.—Allen's case, 60 Ala. 19.

5014 (4329). **When defective oath no ground for reversal of criminal case by supreme court.**—No criminal cause taken by appeal to the supreme court shall be reversed because of any defect in the administration of the oath to any grand or petit jury, unless the record in the cause discloses the fact that some objection was taken in the court below, during the progress of the trial, based on such defect; but this rule shall not apply to cases where it appears affirmatively from the record that the appellant did not have the benefit of counsel on his trial in the court from which the appeal was taken.

5015 (4330) (4879, 4880) (4178, 4179) (626, 627). **Peremptory challenges; number allowed state and defendant.**—The state is entitled to fourteen peremptory challenges on the trial of a capital offense, to four, on the trial of any felony not capital, to three, on the trial of any misdemeanor, and to four, on the trial of bastardy proceedings; the defendant is entitled to twenty-one peremptory challenges, when on trial for a capital offense, to eight, when on trial for any felony not capital, to five, when on trial for a misde-

Feb. 27, 1887, p. 151, §13. As amended Feb. 28, 1889, p. 77, §2.

meanor, and to six, when on trial in bastardy proceedings. When two or more defendants are tried jointly for a capital offense, each defendant is entitled to eleven peremptory challenges; on the trial of two or more defendants for any felony not capital, each defendant is entitled to four peremptory challenges, and on the trial of two or more defendants for a misdemeanor, each defendant is entitled to three peremptory challenges. This section does not repeal any common-law right of challenge.

State must pass on jurors before defense.—Spigener's case, 62 Ala. 383. After state challenges, court may require defendant to pass on remaining jurors before filling up jury.—Wilson's case, 31 Ala. 371. Juror, if inadvertently taken, may be peremptorily challenged by defendant at any time before he is sworn.—Murray's case, 48 Ala. 675. Unless waived, defendant's right of challenge not lost until the oath is tendered to juror.—Ib.; Drake's case, 51 Ala. 30; Spigener's case, 62 Ala. 383. But too late after juror is sworn.—Rash's case, 61 Ala. 89; Henry's case, 77 Ala. 75. Or after solicitor and defendant have expressed satisfaction with jury as organized.—Sparks's case, 59 Ala. 82; Spigener's case, 62 Ala. 383. Law increasing number of challenges for state and defense; trial had under new law.—Lore's case, 4 Ala. 173. Discretionary with court to allow state to challenge after first announcing satisfied.—Daniel's case, 88 Ala. 220. Law in force at time of trial regulates number of challenges, and not that at time of commission of offense.—South's case, 86 Ala. 617.

5016 (4331) (4881, 4884) (4180, 4183) (628, 631). **Challenges for cause.**—It is a good ground for challenge by either party—

1. That the person has not been a resident householder or freeholder of the county for the last preceding year.

2. That he is not a citizen of Alabama.

3. That he has been indicted within the last twelve months for an offense of the same character as that with which the defendant is charged.

4. That he is connected by consanguinity within the ninth degree, or by affinity within the fifth degree (computing according to the rules of the civil law), either with the defendant, or with the prosecutor, or the person alleged to be injured.

5. That he has been convicted of a felony.

6. That he has an interest in the conviction or acquittal of the defendant, or has made any promise, or given any assurance, that he will convict or acquit the defendant.

7. That he has a fixed opinion as to the guilt or innocence of the defendant, which would bias his verdict.

8. That he is under twenty-one, or over seventy years of age.

9. That he is of unsound mind.

10. That he is a witness for the other party.

Feb. 28, 1889, p. 77, §2. 11. In any civil case, that the juror is plaintiff or defendant in a case which stands for trial during the week he is challenged; or is related by consanguinity within the ninth degree, or by affinity within the fifth degree (computed according to the rules of the civil law), to any attorney in the cause to be tried, or is a partner in business with any party to such cause.

This statute not repealed by section 4982.—Iverson's case, 52 Ala. 170; Ezell's case, 102 Ala. 113, dissenting opinion, adopted in Parker's case, 102 Ala. 128. Non-residence in county cause for challenge.—Hall's case, 51 Ala. 9; Gray's case, 55 Ala. 86; Hall's case, 40 Ala. 698. Term "householder" implies more

than mere occupant of room or house.—Aaron's case, 37 Ala. 106. One who has merely "rented lands for last twelve months," is not a "freeholder" or "householder."—Iverson's case, 52 Ala. 170. Yearly tenant not a freeholder. Aaron's case, 37 Ala. 106. "Householders" and "freeholders" include man living with his family in wife's house belonging to separate estate.—Sylvester's case, 72 Ala. 201. An unmarried man who rents and occupies a room as a sleeping apartment, taking his meals elsewhere, is not a householder.—Katzenburg v. Lehman, 80 Ala. 512. "Assault with intent to murder" is offense of "same character" as murder under this statute.—Crockett's case, 38 Ala. 387. That juror is on appearance bond of defendant is cause for challenge by state.—Brazelton's case, 66 Ala. 96. As to relations of lawyer and client, master and servant, etc., as causes of challenge, see Ib. 98. That juror is first cousin to prosecuting attorney, is not cause for challenge.—Washington's case, 58 Ala. 355. Nor first cousin of stepfather of deceased.—Kirby's case, 89 Ala. 63. An opinion founded merely on rumor, or formed on the hypothesis of the truth of facts which he has heard, and without the hearing of other facts which may contradict them or lessen their weight, is not cause for challenge.—Bales's case, 63 Ala. 30. But see Jackson's case, 77 Ala. 18. Nor is a juror subject to challenge merely because he has formed an opinion as to the guilt or innocence of the accused, which may be changed by the evidence.—Beason's case, 72 Ala. 191; Carson's case, 50 Ala. 134; Williams's case, 3 Stew. 454; Morea's case, 2 Ala. 275; Hall's case, 51 Ala. 9; Long's case, 86 Ala. 36; Hammil's case, 90 Ala. 577. When held good cause of challenge.—Crockett's case, 38 Ala. 387; Ned's case, 7 Port. 187; Quesenberry's case, 3 Stew. & Port. 308; Henry's case, 77 Ala. 75; King's case, 89 Ala. 146. Age does not disqualify, and not cause for challenge, unless juror is under twenty-one, or over seventy years of age; but may be claimed as exemption.—Williams's case, 67 Ala. 183; Spigener's case, 62 Ala. 383. But if over seventy, juror disqualified.—Arp's case, 97 Ala. 5. Challenges for cause not confined to causes enumerated in Code.—Smith's case, 55 Ala. 1 (overruling, on this point, Leyman's case, 45 Ala. 72; Boggs's case, Ib. 30); Carr's case, 104 Ala. 4; Carr's case, Ib. 43; Wickard's case, 109 Ala. 45. Held cause for challenge, that juror served on trial of another person charged with selling liquor to same intemperate person.—Smith's case, 55 Ala. 1. Also that juror served on previous trial of same case, or has been summoned as a witness for state.—Commander's case, 60 Ala. 1; Atkin's case, Ib. 45; Baldwin's case, 111 Ala. 11. Also, that juror sat on trial of another person, convicted at same term, of like offense, at same time and place. Wickard's case, 109 Ala. 45. Also, that juror is witness and interested in a similar prosecution against defendant.—Carr's case, 104 Ala. 4; Carr's case, Ib. 43. Also, that juror was on the grand jury which found the indictment.—Birdsong's case, 47 Ala. 68; Finch's case, 81 Ala. 41; Williams's case, 109 Ala. 64. But challenge comes too late, if prisoner has accepted him.—Battle's case, 54 Ala. 93. Also, in capital case, where juror on regular jury for the week had previously convicted prisoner's co-defendant, as to whom there had been a severance.—Wesley's case, 61 Ala. 282. Juror is not incompetent because he is a witness in the case.—Bell's case, 44 Ala. 393. (Although, under the statute, he may be challenged for cause.) Challenge for cause may be permitted after solicitor and defendant expressed satisfaction with jury, if cause existed and was not sooner discovered.—Spark's case, 59 Ala. 82; Roberts's case, 68 Ala. 515. But too late after juror sworn.—Ib. See Drake's case, 51 Ala. 30; Stalls's case, 28 Ala. 25; Williams's case, 3 Stew. 454. To knowingly accept disqualified juror, estops right to complain.—Brown's case, 52 Ala. 345. Presumption that party knew, unless contrary appears.—Ib. Also presumed that juror was qualified, if record is silent on the subject.—Rash's case, 61 Ala. 89. Error in disallowing challenge for cause; when not cured by allowing extra number of peremptory challenges.—Iverson's case, 52 Ala. 170. Not error for court, after examining juror, to disallow examination by prisoner's counsel for purpose of ascertaining cause of challenge.—Bales's case, 63 Ala. 30; Hawes's case, 88 Ala. 37. Not error for court to refuse to exclude disqualified juror, unless challenged for cause.—Jackson's case, 94 Ala. 85. Right of challenge for existing cause lost if not claimed before entering upon ceremony of administering oath to jury.—Smith's case, 55 Ala. 1; Henry's case, 77 Ala. 75.

5017 (4332) (4882, 4884) (4181, 4183) (629, 631). **Same; how proved.**—Of the causes of challenge specified in the last preceding section, the first four may be proved by the oath of the person summoned, or by other evidence; the fifth and sixth, by other testimony only; the seventh, by the oath of the person alone; and the others as the court may direct.

Bridges's case, 110 Ala. 15.

5018 (4333) (4883) (4182) (630). **Additional ground of challenge in certain cases in favor of state.**—On the trial for any offense which may be punished capitally, or by imprisonment in the penitentiary, it is a good cause of challenge by the state that the person has a fixed opinion against capital or penitentiary punishments, or thinks that a conviction should not be had on circumstantial evidence; which cause of challenge may be proved by the oath of the person, or by other evidence.

State may challenge for fixed opinion against capital or penitentiary punishment, or waive or forbear to exercise such right.—Murphy's case, 37 Ala. 142; Lyman's case, 45 Ala. 78. But it is not ground for challenge by defense, nor can defendant complain of state for waiving such cause of challenge. Wesley's case, 61 Ala. 282; Harrison's case, 79 Ala. 29. It is a good cause of challenge by the state, in felonies or misdemeanors, that a juror will not convict on circumstantial evidence alone.—Smith's case, 55 Ala. 1. And also, when indictment charges capital offense, to a juror who says that he is not opposed to conviction on circumstantial evidence, but is opposed to punishing capitally on such evidence.—Jackson's case, 74 Ala. 26; Garrett's case, 76 Ala. 18; Tatum's case, 82 Ala. 5; Griffin's case, 90 Ala. 596. When error for court to exclude juror, after being accepted by both sides because of juror's contradictory statements, under oath, as to his qualifications.—Lyman's case, 45 Ala. 78.

5019 (4334) (4885) (4184) (632). **Court may excuse unfit person.**—Any person, who appears to the court to be unfit to serve on the jury, may be excused on his own motion, or at the instance of either party.

This statute not intended to add to number of causes of challenge, but to allow juror to be excused, when physically unable or unfit to sit on jury until trial is ended.—Lyman's case, 45 Ala. 72; Marshall's case, 8 Ala. 302. Power of court to excuse jurors, who, for reasons personal to themselves, should be exempt from serving; also may reject juror who admits cause of challenge. Marshall's case, supra.

5020 (4335) (4751) (4078) (528). **Other excuses allowed by court.**—The court may excuse from service any person summoned as a juror, if he is disqualified or exempt, or for any other reasonable or proper cause, to be determined by the court.

Juror excused "for reasons deemed sufficient by the court," the reasons not being set out, not revisable on appeal.—Moseley's case, 107 Ala. 74. Error to excuse juror without cause, against defendant's objection.—Simon's case, 108 Ala. 27. Juror who cannot understand the English language may be excused. Long's case, 86 Ala. 36. Power of court to excuse jurors for causes incapacitating them from continued service.—Hawes's case, 88 Ala. 37; Webb's case, 100 Ala. 47; Yarbrough's case, 105 Ala. 43. For other causes.—Fariss's case, 85 Ala. 1; Riley's case, 88 Ala. 193; Maxwell's case, 89 Ala. 150; Cole's case, 106 Ala. 76; Dorsey's case, 107 Ala. 157. Policeman on active duty.—Pierson's case, 99 Ala. 148.

5021 (4336) (4886) (4185) (633). **Alien not entitled to jury of aliens.**—An alien is not entitled to a jury composed, in part or wholly, of aliens or strangers.

ARTICLE 8.

THE GRAND JURY; ITS FORMATION, OATH, POWERS, DUTIES AND BUSINESS.

5022 (4337) (4753) (4080) (530). **Grand jury; number; foreman.**—At least fifteen persons must be sworn on the grand jury, one

of whom must be appointed as foreman by the court; and if he is discharged or excused for any cause after the jury is sworn or charged, the court may appoint another in his place.

Challenge of grand jurors by the party about to be indicted, not allowed. Hughes's case, 1 Ala. 665. Instruction of court to grand jury can neither be excepted to nor assigned as error.—Perkins's case, 66 Ala. 457. Objection to indictment because record does not show appointment of foreman should be made by motion to quash, or to strike from file, before trial entered upon. Dotson's case, 88 Ala. 208.

5023 (4338) (4754) (4081) (531). **If fifteen do not appear, or number reduced, how supplied.**—If fifteen persons, duly qualified to serve as grand jurors, do not appear, or if the number of those who appear is reduced below fifteen by reason of discharges, or excuses allowed by the court, or by any other cause, the court must cause an order to be entered on the minutes, commanding the sheriff to summon from the qualified citizens of the county twice the number of persons required to complete the grand jury, which order the sheriff must forthwith execute; and the persons summoned by him are bound to appear presently, and, if necessary, to serve as grand jurors, under the same penalties as if they had been regularly drawn and summoned on the original list of grand jurors for the term; and of the persons so summoned, if a greater number appear than is necessary to complete the grand jury, the names must be written on separate slips of paper, which must be folded or rolled up, so that the name may not be visible, placed in a box, or some substitute therefor, and from them must be drawn, under the direction of the court, a sufficient number of names to complete the grand jury.

If fifteen appear, court has no power to add any more; and if more are added, their acts are invalid.—Cross's case 63 Ala. 40; Berry's case, Ib. 126. Court may order twice as many to be summoned as needed to complete number to eighteen (now twenty-one), or fifteen, or any intermediate number. Kilgore's case, 74 Ala. 1. See Yancy's case, 63 Ala. 141; Couch's case, Ib. 163; Scott's case, Ib. 59. Grand jury ordered to be completed "from the bystanders" is invalid.—Finley's case, 61 Ala. 201; Benson's case, 68 Ala. 513; Couch's case, 63 Ala. 163. The exact words "qualified citizens of the county" need not be used, if words used have same meaning.—Yancy's case, 63 Ala. 141; Stewart's case, 98 Ala. 70. If, after organization, grand jury reduced below fifteen by reason of sickness, court must make an order of record discharging those incapacitated, before supplying their places.—Peters's case, 98 Ala. 38; Scott's case, 63 Ala. 59. Order of discharge not necessary as to persons summoned but who do not appear.—Germolgez's case, 99 Ala. 216.

5024 (4339) (4755) (4082) (532). **Oath of foreman.**—The following oath must be administered to the foreman of the grand jury: "You, as foreman of the grand jury of —— county, do solemnly swear (or affirm, as the case may be) that you will diligently inquire, and true presentment make, of all indictable offenses given you in charge, as well as those brought to your knowledge, committed or triable within the county; the state's counsel, your fellows', and your own, you shall keep secret; you shall present no person from envy, hatred, or malice, nor leave any one unpresented from fear, affection, reward, or the hope thereof; but you shall present all things truly, as they come to your knowledge, to the best of your understanding. So help you God."

Sufficient recital in record that jury were legally sworn.—Lumpkin's case, 68 Ala. 56; Battle's case, 54 Ala. 93. Presumption that jury were properly sworn.—Battle's case, supra; Tanner's case, 92 Ala. 1; Herrington's case, 83 Ala. 9. Objection that foreman was not sworn cannot be raised for first time on appeal.—Roe's case, 82 Ala. 68. Objection must be raised by motion to quash or to strike from file.—Dotson's case, 88 Ala. 208.

5025 (4340) (4756) (4083) (533). **Oath of other grand jurors.** After the oath above prescribed has been administered to the foreman, the following oath must be administered to the other grand jurors: "The same oath which your foreman has taken, on his part, you and each of you, on your respective parts, shall well and truly observe and keep. So help you God."

5026 (4341) (825, 4767) (906, 4094) (772, 544). **Duty of grand jury as to county jail.**—It is the duty of the grand jury to make a personal inspection of the condition of the county jail, in regard to its sufficiency for the safe-keeping of prisoners, their accommodation and health, and to inquire into the manner in which the same has been kept since the last term of the court; and if it be found that such jail is not constructed in the manner prescribed by law, and so strongly and securely built as to prevent the escape of prisoners confined therein, and properly ventilated, they must, as often as may be necessary, cause the persons composing the court of county commissioners, at the time such jail was insufficient, to be indicted.

5027 (4342) (4767) (4094) (544). **To examine condition of treasury, and official bonds; to inquire of indictable offenses, etc.**—It is the duty of the grand jury to examine into the condition of the county treasury, and the bonds of all county officers with regard to their correctness and sufficiency, and to report upon the same; to inquire into all indictable offenses committed or triable within the county, which, as they may be advised by the court, are not barred by lapse of time, or some other cause; and to perform such other duties as are, or may be by law required of them.

5028 (4343). **To inquire into sheriff's accounts with state for feeding prisoners.**—It is the duty of the sheriff to deliver the book in which he enters his accounts with the state for feeding prisoners to the foreman of the grand jury of the circuit or city court of such county, upon the first day of each term thereof; and it shall be the duty of the grand jury to inquire into the correctness of such accounts as may have been so made out since the preceding term.

Feb. 6, 1895, p. 402, §3.

5029. To inquire whether county court has been held as required by law.—It is the duty of the grand jury to inquire whether the county court has been held as required by law, and if they find that it has not been so held, to report that fact to the court.

5030 (4344) (5022) (3539) (3068). **To examine fee-book of probate judge.**—It is the duty of the solicitor and grand jury, at every term of the circuit or city court, to examine the fee-book of the probate judge, and ascertain if illegal fees have been corruptly received.

5031 (4345). **To examine books and papers of county superintendent of education.**—It is the duty of the solicitor and the grand

jury, at every term of the circuit or city court, to examine the books and papers of the county superintendent of education.

5032 (4346) (4768) (4095) (545). **Entitled to free access to jail and county offices.**—They are entitled to free access, at all proper hours, to the county jail, and to the office of the county treasury, and to the examination, without charge, of all records and other papers in any of the county offices connected in any way with their duties.

5033 (4347) (4774) (4101) (551). **Witnesses and evidence; issue of subpœnas; proceedings against defaulters.**—The solicitor, or the clerk of the court, on the application of the grand jury, must issue subpœnas for any witnesses whom they may require to give evidence before them; and if witnesses so summoned fail to attend, the subpœnas must be returned to court, with the default thereon indorsed, signed by the foreman; and the same proceedings may thereupon be had against them as against other defaulting witnesses, the indorsement of the foreman being presumptive evidence of the default.

Sufficiency of scire facias against such witness; what will not support final judgment.—Durden's case, 32 Ala. 579. Contempt by refractory witness. Newsum's case, 78 Ala. 408.

5034 (4348) (4215) (3627) (85). **Solicitor authorized to summon witnesses.**—Solicitors have authority, and it is their duty, in term time or in vacation, to issue a subpœna for any person whom they may desire to appear before the grand jury, to give evidence of any violation of the law.

5035 (4349) (4773) (4100) (550). **Witnesses; by whom sworn; certificates of attendance; list and book kept and returned.** Witnesses before the grand jury may be sworn by the solicitor or foreman, and a list of all witnesses summoned, and in attendance before such jury during each term, must be kept by the foreman; and he shall give to each of such witnesses a certificate, stating the number of the case in which such witness attended, the number of days of his actual attendance, the number of miles traveled by him and the amount due him; and each of such items the foreman shall enter in a book kept for that purpose; and such book and list, certified by the foreman to be correct, must be by him returned into court, and by the clerk filed and kept as a part of the records of such court.*

Newsum's case, 78 Ala. 408; Banks's case, 78 Ala. 14; Joyner's case, 78 Ala. 448; Scruggs's case, 111 Ala. 6.

5036 (4350) (4776) (4103) (553). **Legal evidence only received before grand jury.**—In the investigation of a charge for any indict-

*An act approved December 7, 1896 (Pamph. Acts, p. 81), entitled "An act to authorize the foreman of the grand jury to issue certificates to witnesses examined before the grand jury," is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That after the passage of this act, it shall be the duty of the foreman of the grand jury to issue certificates to all witnesses examined before the grand jury and such certificates may become claims against the fine and forfeiture fund in the same manner as witness certificates issued to state witnesses by the clerk of the court."

able offense, the grand jury can receive no other evidence than is given by witnesses before them, or furnished by legal documentary evidence; and any witness may be examined and compelled to testify as to any offense within his knowledge.

Objection to indictment found without proper evidence and returned by less than twelve jurors, available by motion to quash or strike from files, not by plea.—Sparrenberger's case, 53 Ala. 481; Perkins's case, 66 Ala. 457. See Washington's case, 63 Ala. 189. What not legal documentary evidence; no inquiry allowed as to sufficiency of legal evidence.—Sparrenberger's case, supra. If competent witness examined before grand jury, such motion cannot be entertained.—Washington's case, 63 Ala. 189.

5037 (4351) (4780) (4107) (557). **When juror may be required to disclose testimony.**—A grand juror may be required by any court to disclose the testimony of any witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with the testimony given by the witness before the court, or on a charge of perjury against him.

Pellum's case, 89 Ala. 28.

5038 (4352) (4769) (4096) (546). **Indictment discretionary in misdemeanors, etc.**—The grand jury are not bound to find an indictment for any misdemeanor, where no prosecutor appears, unless twelve of their number think it necessary for the public good.

What is meant by "prosecutor."—Blackman's case, 98 Ala. 77.

5039 (4353) (4777) (4104) (554). **Indictment; concurrence of twelve jurors necessary; how indorsed.**—The concurrence of at least twelve grand jurors is necessary to find an indictment; and when so found it must be indorsed "a true bill," and the indorsement signed by the foreman.

Immaterial variance between name (Hutcheson) of foreman, and name (Hutch*i*nson) indorsed.—Steadman's case, 7 Port. 496. Variance immaterial, if idem sonans.—Jackson's case, 74 Ala. 26. Also where it is J. H. Karter on indictment, and John H. Carter in minute entry.—McDaniel's case, 76 Ala 1. Indorsement "true bill" essential.—Mose's case, 35 Ala. 421. Name of foreman signed by clerk of jury to indorsement "true bill" in presence, and by direction of foreman, reprehensible, but does not invalidate indictment.—Benson's case, 68 Ala. 544. Indorsement by foreman and filing by clerk sufficient evidence of validity of indictment.—Hubbard's case, 72 Ala. 164. Court takes judicial notice of term at which indictment returned and filed.—Overton's case, 60 Ala. 73. What shown to be sufficient compliance with statute as to indorsement, presentation, and filing of indictment.—Wesley's case, 52 Ala. 182; McCuller's case, 49 Ala. 39; McKee's case, 82 Ala. 32. Examination and refusal to find bill cannot affect power and action of succeeding grand jury.—Nicholson's case, 72 Ala. 178. Clerk's indorsement not necessary to validity of indictment.—Stanley's case, 88 Ala. 154.

5040 (4354) (4778) (4105) (555). **Indorsement of prosecutor's name, etc.**—If a prosecutor appears, his name must be indorsed by the foreman on the indictment; and if no prosecutor appears, the words "no prosecutor" must be indorsed thereon.

These indorsements merely directory, and their omission will not invalidate the indictment.—Hughes's case, 1 Ala. 655. See Ashwood's case, 63 Ala. 120. What is meant by "prosecutor."—Blackman's case, 98 Ala. 77.

5041 (4355) (4779) (4106) (556). **Liability of prosecutor and foreman for costs.**—When the indictment is for a misdemeanor, and the court is of opinion that the prosecution is frivolous or malicious, the prosecutor is liable for the costs; and if the foreman of

the grand jury fails to make the indorsement required of him by the last preceding section, he is liable for the costs as if he were the prosecutor.

Prosecutor can be taxed for costs only in misdemeanors; and record must show that prosecution appeared frivolous or malicious.—Burns's case, 5 Ala. 227; Tuck's case, 8 Ala. 664.

5042 (4356) (4770) (4097) (547). **Juror must disclose offenses known to him.**—If any grand juror knows, or has reason to believe, that a public offense has been committed, which may be indicted and tried in that county, it is his duty to disclose the same to his fellow-jurors, who must thereupon investigate it.

5043 (4357) (4771) (4098) (548). **Juror must withdraw when interested.**—A grand juror must not be present at, or take any part in the deliberations of his fellow-jurors respecting any public offense with which he is charged, or which was committed against his person or property, or when he is a prosecutor, or when he is connected by blood or marriage with the person charged.

Grand jury cannot be called, and required to expurgate themselves of any supposed interest or bias, at the instance of one in jail, and expecting an indictment to be preferred against him.—Clarissa's case, 11 Ala. 57. Objection made by plea.—Ib. 57.

5044 (4358) (4772) (4099) (549). **Deficiency in such case; how supplied.**—If, by reason of the provisions of the preceding section, the number of grand jurors is reduced below thirteen in the investigation of any matter, the court must supply the deficiency from the bystanders; and the persons so placed on the grand jury must serve only during such investigation.

5045 (4359) (4775) (4102) (552). **Attendance of solicitor.**—The solicitor must attend before the grand jury when required by them, and he may do so whenever he sees fit, for the purpose of examining witnesses in their presence, or giving them legal advice as to any matter connected with their duties, and he may appear before them at any time to give information as to any matter cognizable by them; but he must not be present at the expression of their opinions, or the giving of their votes on any matter before them.

An attorney is not authorized to go before the grand jury at request of the solicitor and perform his duties; yet indictment, so found, should not be quashed because of such unauthorized appearance of the attorney.—Blevins's case, 68 Ala. 92.

ARTICLE 9.

PROCEEDINGS AGAINST DEFAULTING JURORS.

5046. Defaulting juror punished for contempt; proceedings. Feb. 28, 1887, p. 151, §8. If any person summoned as a grand or petit juror shall fail to obey such summons, without good excuse to be determined by the court, he shall be deemed guilty of a contempt of court; and if no sufficient excuse be rendered for him at the time of his default, a rule shall issue to him to show cause why he shall not be adjudged guilty of such contempt and punished accordingly; and if he shall fail at

the next term after the service of such notice to render such excuse, he shall be fined by the court not more than one hundred dollars, and may be imprisoned in the county jail for not more than ten days.

As to proceedings on scire facias, see Pomeroy's case, 40 Ala. 63; Grund's case, Ib. 709; Hatch's case, Ib. 718; Hall's case, 15 Ala. 431; Craig's case, 12 Ala. 363; Ellison's case, 8 Ala. 273; Hinson's case, 4 Ala. 671; Hayter's case, 7 Port. 156; Lloyd's case, Minor, 34.

ARTICLE 10.

DISCLOSING INDICTMENT AND TESTIMONY GIVEN BEFORE GRAND JURY.

5047 (3969) (4134) (3577) (36). **Disclosure of indictment by officer or grand juror.**—Any judge, solicitor, clerk, or other officer of court, or any grand juror, who discloses the fact that an indictment has been found, before the defendant has been arrested, or has given bail for his appearance to answer thereto, must, on conviction, be fined not less than two hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. (Form 36.)

White's case, 44 Ala. 409.

5048 (3970) (4135) (3578) (37). **Disclosure of testimony before grand jury by witness.**—Any person who, having been a witness before the grand jury, discloses the name of the person about whom he testified, or any of the facts to which he testified, before the arrest of the person against whom he testified, or before such person has given bail for his appearance to answer the indictment or indictments found against him, must, on conviction, be fined not less than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

CHAPTER 167.

LARCENY AND LIKE OFFENSES. 5049–5062.

5049 (3789) (4358, 4359, 4360) (3706, 3707) (160, 161). **Grand larceny.**—Any person, who steals any horse, mare, gelding, colt, filly, mule, jack, jenny, cow, or animal of the cow kind, or any part of any outstanding crop of corn or cotton of the value of five dollars or more; and any person, who steals any personal property of the value of five dollars or more from the person of another, or from or in any building on fire, or which was removed in consequence of an alarm of fire, or from or in any dwelling-house, or from or in any storehouse, warehouse, shop, railroad-car, steamboat, ship, vessel, or boat

used for carrying freight or passengers; and any person who steals any personal property, other than hereinbefore enumerated, of the value of twenty-five dollars, or more; and any person who knowingly, willfully, and without the consent of the owner thereof, enters upon the land of another and cuts and carries off any timber or rails of the value of twenty-five dollars, or more, with the intent to convert the same to his own use, is guilty of grand larceny, and, on conviction, must be imprisoned in the penitentiary for not less than one, nor more than ten years.* (Form 52).

Larceny of outstanding crop; purpose of the statute.—Newsom's case, 107 Ala. 133. When crop becomes the subject of larceny.—Sullins's case, 53 Ala. 474. Unknown to the common law.—Greggs's case, 55 Ala. 116. Not the subject of petit larceny.—Johnson's case, 100 Ala. 55; Smitherman's case, 63 Ala. 24; Pinckard's case, 62 Ala. 167. Statute punishes what were mere trespasses at common law so far as outstanding crops are concerned.—Newsom's case, 107 Ala. 133. Significance of publicity.—Ib. **Larceny of animals**; stealing carcass under twenty-five dollars in value, is petit larceny.—Hunt's case, 55 Ala. 138. A "steer" is "an animal of the cow kind," within the statute.—Watson's case, 55 Ala. 150. A "heifer" is a "cow."—Parker's case, 39 Ala. 365. **Larceny from or in a dwelling-house, storehouse**, etc.; dwelling-house must be such wherein burglary may be committed; larceny from piazza not from a dwelling.—Henry's case, 39 Ala. 679. See Moore's case, 40 Ala. 49. Immaterial that thief was in house by invitation of the owner.—Point's case, 37 Ala. 148. Or that he was a servant.—Case's case, 26 Ala. 17. What constitutes a storehouse.—Jefferson's case, 100 Ala. 59. What a warehouse.—Lynch's case, 89 Ala. 18; Hagan's case, 52 Ala. 373. As to local jurisdiction, see Smith's case, 55 Ala. 59. **Ownership** must be proved as alleged.—Parmer's case, 41 Ala. 416; Thompson's case, 48 Ala. 165; Underwood's case, 72 Ala. 220. Not necessary to produce title-deeds to land.—Morningstar's case, 52 Ala. 405. When proof of possession sufficient.—Ib.; Morris's case, 84 Ala. 446; Patterson v. Kicker, 72 Ala. 406; Miller's case, 40 Ala. 54. Ownership of outstanding crop laid in personal representative.—Walker's case, 111 Ala. 29. When grown by husband on wife's land.—Johnson's case, 100 Ala. 55. Separate estate of wife. Rollins's case, 98 Ala. 79. **Asportavit**; the removal may be slight; mere power to remove not sufficient.—Molton's case, 105 Ala. 18; Thompson's case, 94 Ala. 535; Kemp's case, 89 Ala. 52; Frazier's case, 85 Ala. 17; Croom's case, 71 Ala. 14; Edmonds's case, 70 Ala. 8; Wolf's case, 41 Ala. 412. To take an animal by operating on its volition, assuming dominion over it, is enough.—Wisdom's case, 8 Port. 511. Tolling a hog.—Edmonds's case, 70 Ala. 8. In case of outstanding crop.—Lyons's case, 61 Ala. 224; Sullins's case, 53 Ala. 474. Servant having bare custody of property may commit larceny.—Holbrook's case, 107 Ala. 154; Oxford's case, 33 Ala. 416; Spivey's case, 26 Ala. 90; Crocheron's case, 86 Ala. 64; Washington's case, 106 Ala. 58. Obtaining possession by fraud with intent ab initio to steal.—Wilson's case, 1 Port. 118; Case's case, 26 Ala. 17; Frazier's case, 85 Ala. 17. Taking by joint tenants, tenants in common, or partners.—Bonham's case, 65 Ala. 456; McCall's case, 69 Ala. 227; Holcombe's case, Ib. 218; Jones's case, 76 Ala. 8. Taking one's own goods to charge bailee. Kirksey v. Fike, 29 Ala. 206; Holcombe's case, 69 Ala. 218. Knocking money out of owner's hand, but not getting it, is not larceny.—Thompson's case, 94 Ala. 535. Money paid by mistake.—Bailey's case, 58 Ala. 414; Levy's case, 79 Ala. 259. Larceny by finding.—Rountree's case, 58 Ala. 381; Griggs's case, Ib. 425; Weaver's case, 77 Ala. 26; Allen's case, 91 Ala. 19; Smith's case, 103 Ala. 40. Of lost goods when there are marks of identification, etc., pointing to owner. Allen's case, supra; Smith's case, 103 Ala. 40. Of goods merely mislaid.—Griggs's case, 58 Ala. 425; Allen's, supra. Of a stray horse.—Burger's case, 83 Ala. 36. **Animus furandi**, the intent to steal at the time of taking necessary ingredient of larceny.—Beckham's case, 100 Ala. 15; Crocheron's case, 86 Ala. 64; Weaver's case, 77 Ala. 26; Griggs's case, 58 Ala. 425; Rountree's case, Ib. 381; McMullen's case, 53 Ala. 531; Williams's case, 44 Ala. 396; Spivey's case, 26 Ala. 90; Hawkins's case, 8 Port. 461. Hence, not larceny to take property of another under honest belief of ownership.—Barnes's case, 103 Ala. 44; Bonham's case, 65 Ala. 456; Randle's case, 49 Ala. 14. Nor under bona fide claim of right. Morningstar's case, 55 Ala. 148. Need not be for sake of gain.—Williams's case, 52 Ala. 411. Taking with intent to fasten a fraudulent lien on property would be larcenous.—Fort's case, 82 Ala. 50. As to intent necessary where charge is larceny of outstanding crop.—Newsom's case, 107 Ala. 133. Felonious intent as affected by drunkenness.—Chatham's case, 92 Ala. 47. **Significance of open**

*As amended by joint committee.

taking.—Barnes's case, 103 Ala. 44; Johnson's case, 73 Ala. 523; Newsom's case, 107 Ala. 133; McMullen's case, 53 Ala. 531; Black's case, 83 Ala. 81. **Recent unexplained possession.**—Cooper's case, 87 Ala. 135; White's case, 72 Ala. 195; Underwood's case, Ib. 220; Henderson's case, 70 Ala. 23; Fuller's case, 48 Ala. 273; Martin's case, 104 Ala. 71; Malachi's case, 89 Ala. 134; Murray's case, 48 Ala. 675. Jur ymust say what weight is to be attached to fact of recent possession.—Orr's case, 107 Ala. 35; Underwood's case, 72 Ala. 220. Possession of articles not named in indictment.—Grant's case, 55 Ala. 201. Question of being recent is generally for the jury.—White's case, 72 Ala. 195. Declarations of defendant explanatory of possession admissible when of the res gestæ. Williams's case, 105 Ala. 96; Henderson's case, 70 Ala. 23; Crawford's case, 44 Ala. 45; Allen's case, 71 Ala. 5; Allen's case, 73 Ala. 23; Cooper's case, 63 Ala. 80. Contradictory declarations.—Harrison's case, 55 Ala. 239. There must be other evidence of the corpus delicti before proof made of recent possession. Orr's case, 107 Ala. 35; Fuller's case, 48 Ala. 273. But this may be shown circumstantially.—Colquitt's case, 61 Ala. 48; Roberts's case, Ib. 401. **Indictment** for statutory grand larceny will not support a conviction for petit larceny.—Stone's case, Ala. (22 So. Rep. 275) (overruling Bolling's case, 98 Ala. 80). Charge of larceny from a warehouse not supported by proof that it was from an open shed.—Lynch's case, 89 Ala. 18. Nor is larceny from a piazza larceny from a dwelling-house.—Henry's case, 39 Ala. 679. Indictment in Code form charging larceny "from" a storehouse supported by proof of larceny "in."—Bailey's case, 99 Ala. 143. Indictment for larceny of part of outstanding crop.—Smitherman's case, 63 Ala. 24; Harris's case, 100 Ala. 129; Newsom's case, 107 Ala. 133. Code forms.—Bailey's case, 99 Ala. 143; Bolling's case, 98 Ala. 80. **Description of property** must be proved as charged.—Morris's case, 97 Ala. 82. "One gold watch" a sufficient description.—Pfister's case, 84 Ala. 432. What a sufficient **description of money.**—Owens's case, 104 Ala. 18; Carden's case, 89 Ala. 130; Reed's case, 88 Ala. 36; Burney's case, 87 Ala. 80; Gady's case, 83 Ala. 51; Levy's case, 79 Ala. 259; Grant's case, 55 Ala. 201; DuBois's case, 50 Ala. 139; Croker's case, 47 Ala. 53; Chisolm's case, 45 Ala. 66; Sallie's case, 39 Ala. 691; Williams's case, 19 Ala. 15; Murphy's case, 6 Ala. 845. **Allegation of value is necessary.**—Grant's case, 55 Ala. 201; Williams's case, 44 Ala. 396; Wilson's case, 1 Port. 118. But not of United States coin and notes.—Duvall's case, 63 Ala. 12; Grant's case, 55 Ala. 201. Nor where statute fixes offense without reference to value.—Adams's case, 60 Ala. 52; Sheppard's case, 42 Ala. 531. But in such case there must be evidence of some value.—Lucas's case, 96 Ala. 51. Averment of aggregate value of several articles, sufficient.—Grant's case, 55 Ala. 201. A "heifer" is a "cow."—Parker's case, 39 Ala. 365. A "steer" is an "animal of the cow kind."—Watson's case, 55 Ala. 150. A "pig" is a "hog." Washington's case, 58 Ala. 355. A "yearling" not a sufficient description. Stallenwerk's case, 55 Ala. 142. **Indictment must allege name of owner,** or that it is unknown.—Underwood's case, 72 Ala. 220. Sufficient to allege ownership in railroad company leaving goods for transportation.—Rountree's case, 58 Ala. 381. Ownership property laid in person having possession under claim of right.—Morningstar's case, 52 Ala. 405. But corn raised on plantation not properly laid as property of overseer.—Heygood's case, 59 Ala. 49. **May be joined in different counts** with burglary, embezzlement, receiving stolen property, and offenses of like character.—Orr's case, 107 Ala. 35. And in same count with burglary.—Ib.; Bowen's case, 106 Ala. 178; Gordon's case, 71 Ala. 315. Joinder with burglary, see note to section 4417. With receiving stolen goods, see note to section 5054. With false pretenses, see note to section 4729. **When election necessary.**—Orr's case, 107 Ala. 35; Black's case, 83 Ala. 81; Gordon's case, 71 Ala. 315; Bonham's case, 65 Ala. 456; Peacher's case, 61 Ala. 22. This section is modified and controlled by section 5412, so that **if sentence be for one year only, it must be to hard labor** for the county, or imprisonment in the county jail.—Ex parte Thomas, 113 Ala. 1.

5050 (3790) (4360, 4361) (3708) (162). **Petit larceny.**—Any person, who steals any part of any outstanding crop of corn or cotton, or any personal property under any other circumstances than are specified in the preceding section, if the value of the property is less than twenty-five dollars; and any person, who knowingly, willfully, and without the consent of the owner thereof, enters upon the land of another, and cuts and carries off any timber or rails, with intent to convert the same to his own use, if the value of the property is less than twenty-five dollars; or any person who steals a registered dog, is guilty of petit larceny, and, on conviction, must be impris-

oned in the county jail, or sentenced to hard labor for the county, for not more than twelve months, and may also be fined not more than five hundred dollars, at the discretion of the jury.*

Indictment for carrying off timber in Code form sufficient, and need not allege intent to convert.—Brown's case, 100 Ala. 92. "Timber" includes "wood." Ib. See also note to preceding section.

5051 (3791) (4812) (4138) (588). **Description of animal stolen.** In an indictment for the larceny of any animal, it is sufficient to describe the animal by such name as, in the common understanding, embraces it, without designating its sex.

5052 (3792) (4362) (3709) (163). **Judgment for value of stolen property on conviction of larceny and like offenses.**—When the defendant is found guilty of larceny, obtaining property under false pretenses, embezzlement and all offenses punishable like larceny, the court, justice or jury trying the issue, unless the property has been returned or the value thereof paid to the owner, must assess the value of each article, and such assessed value shall be made an item of costs in the case, and shall be paid in like manner as the other costs taxed against the defendant, and the clerk of the court shall issue a certificate to the owner of the property for the value of such property as assessed by the court or jury. But the amount of such assessed value must not be included in any bill of costs paid by the state, or for which a defendant is sentenced to hard labor. As amended Feb. 7, 1889, p. 30.

5053 (3793) (4368) (3713) (167). **Bringing stolen property into this state.**—Any person, who brings into this state any personal property which he has stolen elsewhere, must, on conviction, be punished as if he had stolen it in this state. (Form 20).

Statute does not propose to punish for larceny in another state, but for bringing such property into this state.—Adam's case, 14 Ala. 490; Seay's case, 3 Stewart, 123. Taking must be such as to constitute larceny here; immaterial whether larceny or not in other state.—Spencer's case, 20 Ala. 24; Murray's case, 18 Ala. 727; Ham's case, 17 Ala. 188. And the larceny must be charged as if committed here.—Ham's case, 17 Ala. 188. Sufficiency of indictment. Alsey's case, 39 Ala. 664. Must be framed under the statute creating this offense, and not in form for larceny.—La Vaul's case, 40 Ala. 44.

5054 (3794) (4365, 4367) (3710, 3712) (164, 166). **Buying, receiving, concealing, etc., stolen property.**—Any person, who buys, receives, conceals or aids in concealing any personal property whatever, knowing that it has been stolen, and not having the intent to restore it to the owner, must, on conviction, be punished as if he had stolen it; and such offender may be tried and convicted, although the person who stole the property has not been tried and convicted. (Form 71.)

Circumstances constituting **the offense**, and from which jury may justly infer guilt.—Adam's case, 52 Ala. 379. **Indictment** may charge conjunctively "receive *and* conceal," as well as disjunctively "receive *or* conceal."—Murphy's case, 6 Ala. 845. Must allege "not having the intent to restore" the goods, etc.—Sellers's case, 49 Ala. 357; Holt's case, 86 Ala. 599. Must allege name of owner with same certainty as in larceny, but need not allege whether thief has been prosecuted, or his name.—Murphy's case, 6 Ala. 845. Joinder of several counts, and with larceny.—See Oxford's case, 33 Ala. 416; Orr's case, 107 Ala. 35; Broughton's case, 105 Ala. 103. A sufficient form of indictment in Sellers's case, 49 Ala. 357. **Evidence** of receiving stolen goods.—Adam's case, 52 Ala.

*As amended by joint committee.

379. The owner a competent witness.—Gassenheimer's case, 52 Ala. 313. And may testify what the value was to him.—Cohen's case, 50 Ala. 108. Proof of guilty knowledge.—Gassenheimer's case, 52 Ala. 313; Collins's case, 33 Ala. 434. Proper charge as to what may authorize conviction.—Ib. Possession of stolen goods, when sufficient to infer guilt of receiving, etc.—Adam's case, 52 Ala. 379; Martin's case, 104 Ala. 71. **Punishment** according to assessed value of property.—Cohen's case, 50 Ala. 109; DeBardelaben's case, Ib. 179. What facts necessary to support conviction.—Hester's case, 103 Ala. 83. Witness may testify that he knew that the goods in defendant's possession were the stolen goods by the marks on them.—Ib. Indictment charging receiving $200 in gold coin not sufficient.—Burney's case, 87 Ala. 80. If the larceny of the property concealed under the circumstances alleged would be a felony, the concealing it is also a felony.—Broughton's case, 105 Ala. 103.

5055 (3861). **Taking or using temporarily any animal or vehicle of another without authority.**—Any person, who unlawfully takes for temporary use, or uses temporarily, any animal or vehicle, without the consent of the owner, or person having control thereof, and without a bona fide claim of title thereto, must, on conviction, be fined not more than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months; but no prosecution shall be commenced, or indictment found under this section, except upon complaint of the owner, or person having control of such animal or vehicle.

Indictment must allege that the using was without the consent of the "person having the control thereof."—Blackman's case, 98 Ala. 77; Bellinger's case, 92 Ala. 86. Want of criminal intent, or belief that owner would not object, no defense.—Bellinger's case, 92 Ala. 86. Prosecution must be instituted by owner, but indictment need not show it.—Ib.

5056 (3862). **Cutting loose or floating off logs or timber without authority.**—Any person, who, without authority of the owner, cuts loose and sets adrift any log or timber fastened to the bank of any navigable stream, or who runs or floats any log or timber of another into any creek, bayou, lagoon, or lake, with the intention of concealing or appropriating the same, must, on conviction, be fined not less than one hundred, nor more than two hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, not more than one year.

5057 (3863). **Selling or disposing of floating logs or timber taken up unlawfully.**—Any person, who takes up any floating logs or timber which are branded or marked, and sells or disposes of the same without the consent of the owner, or his agent, and without a compliance with the law touching the salvage of property taken adrift, must, on conviction, be fined not less than one hundred, nor more than two hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, not more than one year.

5058 (3864) (4364) (2479) (2087). **Concealing, etc., property taken up adrift.**—Any person, who conceals, destroys, injures, obliterates, or defaces any mark upon, or sells, or disposes of, or carries beyond the state, any property taken up adrift, before the expiration of the time allowed for the owner to prove his property, must, on conviction, be fined not less than one hundred dollars.

5059 (3865) (4363). **Taking fish, without owner's consent, from artificial pond, lake, or trap.**—Any person, who takes or catches any fish from a private artificial fish-pond or lake, or fish-trap, without the consent of the owner, must, on conviction, be fined not less than five, nor more than fifty dollars.

5060 (3866) (4440). **Taking and carrying away oysters without consent of owner of bed.**—Any person, who takes or carries away from any oyster-bed any oysters, without the written consentof the owner, must, on conviction, be fined not more than five hundred dollars, and imprisoned in the county jail, or sentenced to hard labor for the county, for not more than one year; one or both, at the discretion of the jury.

5061 (3867). **Disposing of, or retaining without right, military property belonging to state.**—Any person, who sells, purchases, retains, or has in his possession or custody, without right, any military property belonging to this state or any regiment or company of Alabama state troops, or who, after proper demand, refuses to deliver the same to any officer entitled to take possession thereof, is guilty of a misdemeanor; and any person belonging to the Alabama state troops, who, contrary to the lawful orders of the proper officer, retains in his possession or control any military property of the state, is guilty of a misdemeanor; and any commanding officer may take possession of such military property mentioned in this section, wherever the same may be found.

5062 (3868). **Driving animal from lawful into an unlawful district, to be impounded.**—Any person, who knowingly and willfully drives or carries any animal running at large in any district where it is lawful for such animal to run at large, into any other district where it is not lawful for such animal to run at large, with the intention that such animal shall be impounded, must, on conviction, be fined not less than ten, nor more than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

Necessary elements of offense.—Ghent's case, 96 Ala. 17.

CHAPTER 168.

LIBEL AND DEFAMATION. 5063–5066.

5063 (3771) (4106) (3553) (13). **Libel.**—Any person, who publishes a libel of another which may tend to provoke a breach of the peace, must be punished, on conviction, by fine and imprisonment in the county jail, or hard labor for the county; the fine not to exceed in any case five hundred dollars, and the imprisonment or hard labor not to exceed six months.

A libel is whatever tends to injure character, or blacken reputation, or impute fraud, dishonesty, or moral turpitude, or reflects shame, or tends to put one without pale of intercourse.—Moody's case, 94 Ala. 42.

5064 (3772) (4805) (4132) (582). **Indictment for libel.**—An indictment for a libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded; it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be proved on the trial.

The indictment for libel must aver that it had a tendency to provoke a breach of the peace.—Moody's case, 94 Ala. 42; Reid's case, 53 Ala. 402.

5065 (3773) (4107). **Defamation.**—Any person, who writes, prints, or speaks of and concerning any woman, falsely and maliciously imputing to her a want of chastity; and any person who speaks, writes, or prints of and concerning another any accusation falsely and maliciously importing the commission by such person of a felony, or any other indictable offense involving moral turpitude, must, on conviction, be punished by fine not exceeding five hundred dollars, and imprisonment in the county jail, or sentenced to hard labor for the county, not exceeding six months; one or both, at the discretion of the jury. (Form 34.)

That "B. M. had hired witness to swear lies in justice court" is indictable. Booker's case, 100 Ala. 30. Utterance of slanderous words on belief, or information and belief.—Ib. Affidavit alleging defendant did falsely and maliciously speak of and concerning J. W. R. in the presence of S. S., imputing the commission of a felony, is substantially defective, and will not support a conviction.—Miles's case, 94 Ala. 106. See also Haley's case, 63 Ala. 83. If words spoken are false, naturally tend to the injury of the person defamed and were spoken recklessly, though without special ill will, a conviction may be had. Haley's case, 63 Ala. 83; Beal's case, 99 Ala. 234.

5066 (3774) (4108) (3554) (14). **Refusal to testify by printer of libel or defamation.**—The printer or proprietor of any newspaper, hand-bill, advertisement, or libel, the publication of which is punishable under the preceding sections, who refuses, when summoned, to appear and testify before either the grand or petit jury, respecting the publication of such newspaper, hand-bill, advertisement, or libel (not having a good excuse, to be determined by the court), is guilty of a contempt, and also of a misdemeanor; and, on conviction of such misdemeanor, must be fined not less than twenty, nor more than three hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

CHAPTER 169.

LIMITATIONS OF PROSECUTIONS. 5067-5075.

5067 (3707) (4640) (3949) (401). **Offenses as to which there is no limitation.**—There is no limitation of time within which a prosecution must be commenced for any public offense which may be pun-

ished capitally, or for murder in the second degree, manslaughter in the first degree, arson, forgery, counterfeiting, or any offense expressly punishable, under the provisions of this Code, as forgery or counterfeiting.

5068 (3708) (4641). **Six years in conversion of state or county revenue.**—A prosecution for conversion of the state or county revenue must be commenced within six years next after the conversion.

5069 (3709) (4642) (3950) (402). **Five years in perjury and subornation of perjury.**—A prosecution for perjury, or subornation of perjury, must be commenced within five years next after the commission of the offense.

5070 (3710) (4643) (3951) (403). **Three years in other felonies.** The prosecution of all felonies, except those specified in the preceding sections, must be commenced within three years next after the commission of the offense.

Applies to burglary.—Hurt's case, 55 Ala. 214.

5071 (3711) (4644) (3952) (404). **Twelve months in misdemeanors before circuit or county court.**—The prosecution of all misdemeanors before the circuit, city, or county court, unless otherwise provided, must be commenced within twelve months next after the commission of the offense.

Issuing a warrant charging false pretense, does not stop statute for offense of defrauding an employer, though for same act.—Jackson's case, 106 Ala. 136. Prosecution for escape from hard labor contract not barred until twelve months from escape.—Fuller's case, 97 Ala. 27. Issuing a warrant alone does not stop the running of the statute of limitations.—Giles's case, 88 Ala. 230; Martin's case, 79 Ala. 267; Bube's case, 76 Ala. 73.

5072 (3712) (4645) (3953) (405). **Sixty days in prosecution before justice.**—Prosecutions before a justice of the peace for offenses within his jurisdiction, unless otherwise provided, must be commenced within sixty days next after the commission of the offense.

5073 (3713). **Thirty days in using temporarily personal property of another.**—A prosecution for unlawfully taking or using temporarily the property of another must be commenced within thirty days after the commission of the offense.

5074 (3714) (4646) (3954) (406). **Commencement of prosecution.**—A prosecution may be commenced, within the meaning of this chapter, by finding an indictment, the issuing of a warrant, or by binding over the offender.

Ross's case, 55 Ala. 177; Molett's case, 33 Ala. 408; Foster's case, 38 Ala. 425. Giles's case, 88 Ala. 230; Martin's case, 79 Ala. 267; Bube's case, 76 Ala. 73.

5075 (3715) (4820) (4147) (597). **Statute suspended in certain cases.**—When an indictment is lost, mislaid, or destroyed, or when the judgment is arrested, or the indictment quashed for any defect therein, or for the reason that it was not found by a grand jury regularly organized, or because it charged no offense, or for any other cause, or when the prosecution is dismissed because of a variance between the allegations of the indictment and the evidence, and a new indictment is ordered to be preferred, the time elapsing between the

preferring of the first charge or indictment and the subsequent indictment must be deducted from the time limited for the prosecution of the offense last charged.

Molett's case, 33 Ala. 408; Foster's case, 38 Ala. 425; Weston's case, 63 Ala. 155; Coleman's case, 71 Ala. 312; Smith's case, 79 Ala. 21; Bazell's case, 89 Ala. 14.

CHAPTER 170.

LIQUORS, SELLING, GIVING, ETC., ILLEGALLY. 5076-5087.

As amended Feb. 18, 1891, p. 1209.

5076 (4036) (4204) (3618) (76). **Retailing or selling vinous or spirituous liquors without license.**—Any person, who, without license as a retailer, sells, barters or exchanges spirituous, vinous, or malt liquors, in any quantity less than one quart, or in any quantity, if the same, or any portion thereof, is drunk on or about his premises, must, on conviction, be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. (Form 79.)

The court will take judicial notice that lager-beer is malt liquor.—Adler's case, 55 Ala. 16; Watson's case, Ib. 158. And that whisky is a spirituous liquor.—Freiberg's case, 94 Ala. 91; Wall's case, 78 Ala. 417. And that grape wine is a vinous liquor.—Adler's case, 55 Ala. 16. Statute construed.—Ulmer's case, 61 Ala. 208. This offense is distinguished from engaging in or carrying on business; is not a revenue, but a penal law, and hence not repealed by a revenue law.—Campbell's case, 46 Ala. 116; Lillensteine's case, Ib. 498; McPherson's case, 54 Ala. 221; Sanders's case, 58 Ala. 371. It is mere police regulation. McPherson's case, 54 Ala. 221. One act of sale sufficient, of which prosecutor must elect.—Martin's case, 59 Ala. 34; McPherson's case, 54 Ala. 221; Sanders's case, 58 Ala. 371; Lawson's case, 55 Ala. 118; Cost's case, 96 Ala. 60. When election not required.—Olmstead's case, 92 Ala. 64; Taylor's case, 100 Ala. 68. What is and what is not an election by prosecutor.—Elam's case, 26 Ala. 48; Hughes's case, 35 Ala. 351; Seibert's case, 40 Ala. 60. License to keep a tavern does not confer the right.—Page's case, 11 Ala. 849. License to one partner confers no authority on firm or co-partners, although a license may be granted to a partnership.—Long's case, 27 Ala. 32. License to one firm confers no authority on another composed in part of same members.—Wharton v. King, 69 Ala. 365. Mere removal to another county does not abrogate license, or make clerk indictable for continuing business.—Thompson's case, 37 Ala. 151. Agent of unlicensed corporation indictable.—Martin's case, 59 Ala. 34. Conviction of husband for sale by wife in his presence.—Hensly's case, 52 Ala. 10. Statute contains no exception of sale for medicinal purposes.—Thomason's case, 70 Ala. 20. When drinking must be "on or about the premises."—Hafter's case, 51 Ala. 37. See Ulmer's case, 61 Ala. 208. What constitutes "on or about the premises."—Swan's case, 12 Ala. 594; Dowman's case, 14 Ala. 242; Easterling's case, 30 Ala. 46; Brown's case, 31 Ala. 353; Pearce's case, 40 Ala. 720; Christian's case, Ib. 376; Patterson's case, 36 Ala. 297; Powell's case, 63 Ala. 177; Christian's case, 40 Ala. 376; Whaley's case, 87 Ala. 83. A sale from jug in a field one mile from house, sufficient.—Powell's case, 63 Ala. 177; Pearce's case, 40 Ala. 720. The fact "on or about the premises," sometimes a question for the jury, and sometimes for the court.—Brown's case, 31 Ala. 353; Easterling's case, 30 Ala. 46; Daly's case, 33 Ala. 431. No defense that liquor was drunk on premises without the knowledge of defendant and against his caution.—Jones's case, 96 Ala. 56. Sale or gift made under a shift or subterfuge violates statute.—Marcus's case, 89 Ala. 23; Billingsley's case, 96 Ala. 114; Roberson's case, 100 Ala. 37. Intoxicating bitters or beverages.—Carson's case, 69 Ala. 235; Wall's case, 78 Ala. 417; Carl's case, 87 Ala. 17; s. c., 89 Ala. 93; Brantley's case, 91 Ala. 47; Compton's case, 95 Ala. 25; Roberson's

case, 100 Ala. 123. "Brandy peaches" and "brandy cherries."—Ryall's case, 78 Ala. 410. Fact that the decoction was classed and taxed by the United States as a proprietary medicine, immaterial.—Wall's case, 78 Ala. 417. When defendant acted as the mere agent of another in procuring the liquor.—Campbell's case, 79 Ala. 271; Morgan's case, 81 Ala. 72; DuBois's case, 87 Ala. 101. Sale by partner or clerk in scope of business or employment.—Segars's case, 88 Ala. 144. Sale by seventeen-year-old girl under direction of parent.—Cagle's case, 87 Ala. 93. Sale in back room of defendant's store, without knowledge or interest on his part, does not render him liable.—Perkins's case, 92 Ala. 66. Statute not intended to interfere with bona fide sale of articles used for medical, toilet or culinary purposes and which contain alcohol as a necessary ingredient.—Carl's case, 87 Ala. 17. See Compton's case, 95 Ala. 25. When state makes out a prima facie case, burden on defendant to show his authority to sell.—Tinker's case, 96 Ala. 115; Bogan's case, 84 Ala. 449. Void license no protection and may be collaterally attacked.—Russell's case, 77 Ala. 89. That the sale was in original imported packages is no defense since the act of congress approved August 8, 1890.—Tinker's case, 90 Ala. 630.

5077 (4037) (4806) (4133) (583). **Forms of indictment for retailing, and violating special prohibitory laws; proof of retailing.** In an indictment for retailing spirituous, vinous, or malt liquors without license, it is sufficient to charge that the defendant sold spirituous, vinous, or malt liquors without a license, and contrary to law; and on the trial, any act of retailing in violation of the law may be proved; and for any violation of any special and local laws regulating or prohibiting the sale of spirituous, vinous, or malt liquors within the place specified, such form shall be held good and sufficient.

Indictment for retailing, etc., in form prescribed by the Code, is sufficient. Bryan's case, 45 Ala. 86; Sills's case, 76 Ala. 92; McCreary's case, 73 Ala. 480. When defective.—Raisler's case, 55 Ala. 64. Indictment charging that defendant "did sell vinous or spirituous liquors without a license and contrary to law," sufficient for offense of violating local prohibitory laws.—Powell's case, 69 Ala. 10; Boon's case, Ib. 226; McCreary's case, 73 Ala. 480; Bogan's case, 84 Ala. 449; Olmstead's case, 89 Ala. 16; Williams's case, 91 Ala. 14; Compton's case, 95 Ala. 25; Cost's case, 96 Ala. 60. Does not cover **giving away** liquor under local law.—Williams's case, 91 Ala. 14. Includes intoxicating bitters when shown to contain spirituous, vinous, or malt liquors in appreciable quantity.—Brantley's case, 91 Ala. 47.

5078 (4038) (4205). **Liquor to minor or person of intemperate habits; false statement as to age.**—Any person, who sells, barters, exchanges or gives spirituous, vinous, or malt liquors to a minor, without the consent of the parent or person having the management or control of such minor, unless it be upon the prescription of a physician; or who sells, barters, exchanges or gives spirituous, vinous, or malt liquors to a person of known intemperate habits, unless it be upon the prescription of a physician, must, on conviction, be fined not less than fifty, nor more than five hundred dollars; and any minor, who obtains any such liquor by means of a false representation as to his age, must, on conviction, be fined not more than fifty dollars. (Form 80.)

As amended Feb. 18, 1891, p. 1209.

Punishes sale with or without license.—Ulmer's case, 61 Ala. 208. The actual seller, whether owner of saloon, or employe, indictable.—Marshall's case, 49 Ala. 21. The requisition must be a verbal or written application or request to sell by the physician himself.—Bain's case, 61 Ala. 75. Proof of infancy, based upon recollection of witness as to former appearance of alleged minor. Weed's case, 55 Ala. 13. Defendant permitted to prove that minor was mature-looking person; but witness cannot be asked if he would not take him to be twenty-one years old.—Marshall's case, 49 Ala. 21; Freiberg's case, 94 Ala. 91. Charge asserting fact of minority is conclusive of defendant's intention, is erroneous.—Ib. Immaterial who owns liquor given to minor or intemperate

person.—Hill's case, 62 Ala. 168. Sale made under honest, though mistaken, belief that minor was twenty-one years old, is excusable; but whether so made is a question for jury.—Adler's case, 55 Ala. 16; Freiberg's case, 94 Ala. 91. Voluntary drunkenness of defendant no defense or excuse.—Hill's case, 62 Ala. 168. Specific intent not necessary; gift or sale is evidence of intention.—Bain's case, 61 Ala. 75. To authorize a conviction for selling to a person of intemperate habits, these facts must be proved: A sale or gift to a person of intemperate habits, and knowledge in the seller or giver of such intemperate habits.—Jones's case, 100 Ala. 88; Collins's case, 83 Ala. 365; Tatum's case, 63 Ala. 147. Barkeeper selling to one who divides with or treats an intemperate person or a minor, at the bar, is guilty of selling to such intemperate person or minor.—Walton's case, 62 Ala. 197; Page's case, 84 Ala. 446. Or selling to a third person to whom, on suggestion of barkeeper, minor handed money for the purpose. Lile's case, 88 Ala. 139. What does not constitute either selling or giving. Young's case, 58 Ala. 358; Bryant's case, 82 Ala. 51; Coker's case, 91 Ala. 92. Sale of brandy peaches or brandy cherries preserved in spirituous liquors in appreciable quantity, within statute.—Ryall's case, 78 Ala. 410. That minor has been relieved of disabilities of non-age immaterial.—Coker's case, 91 Ala. 92. Aiding or abetting sale is sufficient.—Walton's case, 62 Ala. 197. What constitutes intemperate habits.—Tatum's case, 63 Ala. 147; Smith's case, 55 Ala. 1. Knowledge by defendant of one's intemperate habits necessary; but may be inferred by the jury from notoriety.—Smith's case, 55 Ala. 1.; Tatum's case, 63 Ala. 147; Stallings's case, 33 Ala. 425. Proof of fact of intemperate habits. Atkins's case, 60 Ala. 45. Is a collective fact to which a witness may testify. Tatum's case, 63 Ala. 147; Smith's case, 55 Ala. 1. Whether a person of such known habits, is a question for the jury.—Elam's case, 25 Ala. 53; Smith's case, 55 Ala. 1. Indictment in Code form sufficient; not necessary to negative either the consent of the parent or guardian or the prescription of a physician. Heath's case, 99 Ala. 179; Freiberg's case, 94 Ala. 91; Tatum's case, 63 Ala. 147; Spigener's case, 62 Ala. 383; Atkins's case, 60 Ala. 45. Indictment alleging sale without prescription from "licensed physician" is valid, though "physician" alone is sufficient.—Dean's case, 100 Ala. 102. Burden on defendant to prove such consent or prescription.—Freiberg's case, 94 Ala. 91; Atkins's case, 60 Ala. 45; Farrall's case, 32 Ala. 557. Jury need not find whether liquor, if averred in the alternative, was spirituous, vinous, or malt.—Adler's case, 55 Ala. 16. Court may charge jury as to evil consequences of this offense.—Weed's case, 55 Ala. 13. For selling or giving liquor to intoxicated person, resulting in death, no civil action lies.—King v. Henkie, 80 Ala. 505.

As amended Feb. 18, 1891, p. 1263.

5079 (4039) (4206). **Giving or selling liquor to person of unsound mind.**—Any person, who sells, barters, exchanges or gives spirituous, vinous, or malt liquors to a person known or reputed to be of unsound mind, unless it be upon the prescription of a physician, or with the consent of the parent, guardian, husband or wife of such person, must, on conviction, be fined not less than fifty, nor more than five hundred dollars. (Form 81.)

Dec. 4, 1886, p. 121.

5080. Employing minor to sell liquor.—Any person, who employs any minor to sell vinous, spirituous, or malt liquors, must, on conviction, be fined not less than fifty, nor more than five hundred dollars.

5081 (4040) (4202). **Prohibiting disposition of liquors near place of religious worship, etc.**—Any person, who sells, gives away, or otherwise disposes of any spirituous, vinous, or malt liquors, within one mile of any church, or other place of religious worship, not in any incorporated town or city, on any day on which there is public preaching at such place, must, on conviction, be fined not less than twenty, nor more than fifty dollars, and be imprisoned in the county jail, or sentenced to hard labor for the county, one or both, at the discretion of the jury.

Special prohibitory liquor laws not unconstitutional.—Barnes's case, 49 Ala. 342; Dorman's case, 34 Ala. 216. Retail license not operative within special prohibited limits.—Barnes's case, 49 Ala. 342; Hudgin's case, 46 Ala. 208.

5082 (4041). **Evasion of prohibitory liquor laws.**—Any person, who conceals himself in any house, room, booth, inclosure, or other

place, and sells, gives away, or otherwise disposes of spirituous, vinous, or malt liquors, or intoxicating beverage, in violation or evasion of law, or, by any device or subterfuge, sells, gives away, or otherwise disposes of any spirituous, vinous, or malt liquors, or intoxicating beverage, in violation or evasion of law, must, on conviction, be fined not less than two hundred and fifty, nor more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

Elements of offense, sufficiency of indictment and evidence, policy of statute.—Boggus's case, 78 Ala. 26.

5083 (4042). **Permitting such evasion.**—Any person, being the owner or proprietor, or having the control or possession of any house, room, booth, inclosure, or other place, who knowingly permits any person to conceal himself therein, and to sell, give away, or otherwise dispose of spirituous, vinous, or malt liquors, or intoxicating beverage, in violation or evasion of law, or knowingly permits any person to use therein any device or subterfuge in selling, giving away, or otherwise disposing of such liquors or beverage, in violation or evasion of law, must, on conviction, be fined not less than fifty, nor more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

5084 (4043). **Same; duty of justice, etc.; warrant for arrest of all persons on premises, issued when.**—If any person violates the provisions of section 5082 (4041), and so conceals himself that he is not known, upon complaint being made on oath before a justice of the peace, or judge of the county court, that spirituous, vinous, or malt liquors, or intoxicating beverage, have been sold, given away, or otherwise disposed of, in violation or evasion of law, and that the person committing such offense conceals himself in a house, room, booth, inclosure, or other place, or is using therein a device or subterfuge in selling, giving away, or otherwise disposing of such liquors or beverage, and that such person is unknown to the person making the complaint, it is the duty of such justice or judge to issue forthwith a warrant of arrest for such unknown person for the offense charged in the complaint, and immediately place such warrant in the hands of a constable or sheriff, who shall proceed at once to the house, room, booth, inclosure, or other place, in which such violation of law is alleged to have occurred, and arrest all persons therein; and if such constable or sheriff is refused admittance, he shall force an entrance into such house, room, booth, inclosure, or other place, and, if necessary, break in the door, or other part thereof, and arrest all persons found therein, and carry them before the officer before whom the warrant is returnable; and thereupon such proceedings shall be had as if such warrant contained the name of each person so arrested.

5085 (4044). **Same; forfeiture of lease, etc.**—Any lessee of any house, room, booth, inclosure or other place, who uses or permits the

use of the same in violation of sections 5082 (4041) and 5083 (4042), thereby forfeits his lease.

Feb. 9, 1895, p. 487.

5086. United States license competent evidence on trial of indictment for violation of prohibition laws.—Upon the trial of any person indicted for the violation of any law which prohibits the sale of vinous, spirituous, or malt liquors or of alcoholic bitters or beverages of any kind, it shall be competent to prove that the defendant has obtained a license from the internal revenue department of the United States to sell such liquors, bitters, or beverages at the places named in the indictment for a period of time including the time charged in the indictment; and parol testimony may be received of the existence of such license.

5087. Taking or soliciting orders for liquors to be shipped into prohibition district.—Any person, who, within the limits of any district in which the sale of spirituous, vinous, or malt liquors is prohibited by law, solicits or receives any order for spirituous, vinous, or malt liquors in any quantity to be shipped or sent into such district, must, on conviction, be fined not less than twenty, nor more than one hundred dollars; and, if such order be in writing, parol evidence thereof is admissible. (Form 84.)

CHAPTER 171.

LYNCHING. 5088, 5089.

5088 (3750) (4317) (3684) (141). **Abusing or beating accused person, or lynching.**—Any two or more persons, who abuse, whip, or beat any person, upon any accusation, real or pretended, to force such person to confess himself guilty of any offense, or to make any disclosures, or to consent to leave the neighborhood, county, or state, must, on conviction, each be fined not less than five hundred dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months. (Form 11.)

Underwood's case, 25 Ala. 70; Higginbotham's case, 50 Ala. 133.

5089 (3985). **Sheriff, deputy, or jailer, permitting lynching of prisoner.**—Any sheriff, deputy-sheriff, or jailer, who negligently, or through cowardice, allows a prisoner to be taken from the jail of his county, or to be taken from his custody and put to death by violence, or to receive bodily harm, must, on conviction, be fined not less than five hundred, nor more than two thousand dollars, and may also be sentenced to hard labor for the county for not more than two years.

CHAPTER 172.

MALICIOUS MISCHIEF; INJURY AND CRUELTY TO ANIMALS.

5090–5094.

5090 (3869) (4408, 4420) (3733, 3738) (186, 191). **Malicious injury to animals or other article of value.**—Any person, who unlawfully and maliciously kills, disables, disfigures, destroys, or injures any animal, or article or commodity of value, the property of another, must, on conviction, be fined not less than twenty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months; and so much of the fine as may be necessary to repair the injury or loss shall go to the party injured. (Form 59.)

As amended Dec. 12, 1892, p. 183.

Malice towards owner essential ingredient; else mere trespass.—Northcot's case, 43 Ala. 330; Hobson's case, 44 Ala. 380. Malice inferred from instrument used, and circumstances attending injury inflicted, etc.—Ib. 380; Hill's case, 43 Ala. 335. Malice to son of owner not sufficient.—Northcot's case, Ib. 330. **Indictment** must allege name of owner, or that it is unknown.—Pierce's case, 7 Ala. 728. Value need not be averred.—Caldwell's case, 49 Ala. 34. Alleging injury of two animals conjointly, proof must show that both were injured at same time; but otherwise, if charged in different counts or disjunctively in same count.—Burgess's case, 44 Ala. 190; Thomas's case, 111 Ala. 51. When injury to two mules, caused by two shots fired about three minutes apart, election not required.—Busby's case, 77 Ala. 66.

5091 (3870) (4409, 4410). **Unlawful or wanton killing, disabling, etc., certain domestic animals.**—Any person, who unlawfully or wantonly kills, disables, disfigures, destroys, or injures any horse, mare, gelding, colt, filly, mule, jack, jenny, bull, ox, cow, calf, heifer, hog, goat, or sheep, the property of another, must, on conviction, be fined not less than twice the value of the injury to the animal killed, disabled, disfigured, destroyed, or injured, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months; and one-half of the fine imposed shall go to the owner of the property.

Malice not necessary.—Johnson's case, 37 Ala. 457; Thompson's case, 67 Ala. 106; Tatum's case, 66 Ala. 465. Trespass to pursue and kill with dog animals in one's own field.—Thompson's case, 67 Ala. 106. Specific intent to kill, disable, or injure, unnecessary; sufficient if done unlawfully or wantonly.—Tatum's case, 66 Ala. 465. Indictment may aver ownership of property in different persons or names in different counts; when prosecutor put to an election. Bass's case, 63 Ala. 108. Value of animal killed no bearing on question of guilt vel non.—Ashworth's case, 63 Ala. 120. When an indictment should aver value of property injured.—Garner's case, 8 Port, 447. A witness having testified as to shooting on one day, and then on another, the prosecution is not limited to the first shooting, but may elect to proceed for the second.—Jackson's case, 95 Ala. 17. A tender of full compensation for injury to animal, made before prosecution commenced, is a bar.—Roe's case, 82 Ala. 68.

5092 (3871) (4411). **Same; trial and conviction; mitigation or justification.**—Upon the trial, the defendant may prove in mitigation or justification, as the jury may determine, that, at the time of the injury, the stock was trespassing upon a growing crop, inclosed by a lawful fence, or cultivated without a fence where stock

laws prevail; and no conviction must be had, if it is shown that, before the commencement of the prosecution, compensation for the injury was made or tendered to the owner.

Name of prosecutor need not appear on indictment, nor the record show that complaint was made by owner; yet, on motion and proof quashed if not shown that was found on necessary complaint.—Ashworth's case, 63 Ala. 120. Judgment rendered for whole amount of fine, in favor of state for use of county as in other cases.—Bass's case, 63 Ala. 108. Justification under verbal license; if language ambiguous, left to jury to determine meaning of authority or license from owner to kill, etc.—Ashworth's case, 63 Ala. 120. Tender of compensation for the damage, what necessary.—Ib.; Roe's case, 82 Ala. 68. What necessary to be shown as a defense on ground of doing "damage to any growing crop."—Thompson's case, 67 Ala. 106.

As amended Feb. 16, 1895, p. 697.

5093 (3872). **Cruelty to animals.**—Any person, who overrides, overdrives, overloads, drives when overloaded, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates, or cruelly kills, or causes or procures to be overridden, overdriven, overloaded, driven when overloaded, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated, or cruelly killed, any domestic animal, and whoever, having the charge or custody of any such animal, either as owner or otherwise, inflicts unnecessary cruelty upon the same, or fails to provide the same with proper food, drink or protection from the weather, or cruelly drives the same when unfit for labor, must, on conviction, be fined not less than ten, nor more than one hundred dollars; but this section shall not be construed as prohibiting the dehorning of cattle.

5094 (3873). **Duty of law officer; lawful for any person to arrest; compensation; penalty.**—It is the duty of any officer of the law, county or municipal, and it is lawful for any other person, to arrest and take before a justice of the peace, any person violating the provisions of the preceding section, and shall, upon conviction of the person arrested, be entitled to the sum of two dollars, which shall be taxed as a part of the costs, and any officer herein named, who fails or neglects to arrest such offender, must, on conviction, be fined not less than ten dollars.

CHAPTER 173.

MAYHEM. 5095.

5095 (3735) (4312) (3669) (127). **Mayhem defined.**—Any person, who unlawfully, maliciously and intentionally cuts out or disables the tongue; puts out or destroys an eye; cuts, bites, or strikes off an ear; cuts, bites off, slits, mutilates, or destroys the nose or lip; or cuts, bites, tears, strikes off, or disables a limb, or member, of any other person, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than twenty years. (Form 62.)

Must be unlawfully, intentionally, and with malice.—Abram's case, 10 Ala. 928. Design or intent need not have been formed previous to conflict.—Simmons's case, 3 Ala. 497. What no defense; erroneous charges as to specific design.—Molett's case, 49 Ala. 18. And on question of instruction on self-defense, or animal nature prompting act.—Ib. Under joint indictment, one may be guilty of beating and the other of mayhem.—Absence's case, 4 Port. 397. Injury must be permanent.—Briley's case, 8 Port. 472. But there need not be an entire mutilation of the member, yet must be sufficient to disfigure. Abram's case, 10 Ala. 928. Where injury was by shooting, jury may look to character of wound to determine with what view gun was fired.—Eskridge's case, 25 Ala. 30.

CHAPTER 174.

MISCEGENATION. 5096, 5097.

5096 (4018) (4189) (3602) (61). **Marriage, adultery and fornication between white persons and negroes.**—If any white person and any negro, or the descendant of any negro, to the third generation, inclusive, though one ancestor of each generation was a white person, intermarry, or live in adultery or fornication with each other, each of them must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than seven years.

[Constitutionality of this section discussed.—Ellis's case, 42 Ala. 525; Burns's case, 48 Ala. 195; Ford's case, 53 Ala. 151; Pace's case, 69 Ala. 231; Green's case, 58 Ala. 190 (overruling Burns's case, 48 Ala. 195). Held not violative of fourteenth amendment to constitution of United States.—Pace's case, 69 Ala. 231. Power of state over marriage.—Green's case, 58 Ala. 190. Marriage between white and negro absolutely void.—Hoover's case, 59 Ala. 57. Sufficient indictment in Pace's case, 69 Ala. 231. Evidence that probate judge told parties they could lawfully marry, inadmissible.—Hoover's case, 59 Ala. 57. On failure to prove averments of race, etc., verdict may be for misdemeanor, which would bar subsequent prosecution for felony.—Bryant's case, 76 Ala. 33. Indictment sufficient which charges that B., a negro man, and L., a white woman, did intermarry, or live in adultery or fornication with each other.—Linton's case, 88 Ala. 216. The word "negro" includes "mulatto."—Ib. Character of the woman for chastity is not admissible as evidence.—Ib. A living together in adultery for one day is sufficient.—Ib. Profert of party not on trial.—Ib. That defendant was "foolishly fond of women" not admissible, though his general character be in issue.—Cauley's case, 92 Ala. 71.

5097 (4019) (4190) (3603) (62). **Officer issuing license or performing marriage ceremony.**—Any probate judge, who issues a license for the marriage of any persons who are prohibited by the preceding section from intermarrying, knowing that they are within the provisions of that section; and any justice of the peace, minister of the gospel, or other person by law authorized to solemnize the rites of matrimony, who performs a marriage ceremony for such persons, knowing that they are within the provisions of such section, must each, on conviction, be fined not less than one hundred, nor more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

CHAPTER 175.

OFFICERS AND OFFICES, OFFENSES CONCERNING.

ARTICLE 1.—MISCONDUCT BY OFFICERS AND PERSONS CONCERNED IN THE ADMINISTRATION OF JUSTICE. 5098–5147.
2.—OFFENSES BY OFFICERS CONCERNED IN COLLECTING THE REVENUES OF THE STATE. 5148–5151.
3.—BUYING, SELLING, ILLEGALLY ASSUMING AND WRONGFULLY HOLDING OFFICE. 5152–5159.

ARTICLE 1.

MISCONDUCT BY OFFICERS AND PERSONS CONCERNED IN THE ADMINISTRATION OF JUSTICE.

5098 (3921). **Willful neglect of duty by jury commissioner or officer.**—Any jury commissioner, or other officer, who willfully or negligently fails to discharge any duty required of him by law in the drawing or selecting of a juror or jury, or who draws or selects a juror or jury in any other manner or order than that prescribed by law, must, on conviction, be fined not less than fifty, nor more than one thousand dollars.

5099 (3922). **Corruptly influencing jury commissioner or officer.**—Any person, who attempts, otherwise than by bribery, to influence any jury commissioner, or any other officer charged with the execution of any duty concerning the selecting, drawing, summoning impaneling, or organizing of jurors or juries, must, on conviction, be fined not more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

5100 (3923) (4766) (4093) (543). **Drawing jury unfairly; penalty.**—Any person, who does any act calculated to affect the fair drawing of a jury, and with intent to affect the same, must, on conviction, be fined not less than two hundred, nor more than one thousand dollars, and may also be imprisoned in the county jail for not more than six months; and if such person is the judge of probate, sheriff, or clerk of the circuit or city court, or jury commissioner, or a member of a board of revenue, or a county commissioner, his office is thereby vacated, and must be filled as in other cases of vacancy, on such conviction being certified to the appointing power by the presiding judge or the clerk of the court in which it is had.

5101 (3924) (4121) (3565) (25). **Stocking jury.**—Any sheriff or other officer having a discretion in summoning jurors, who summons any person with intent to produce a result favorable to any party having a cause in the court in which such person is summoned, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than five years.

5102 (3925) (4123) (3570) (29). **Same; connivance of sheriff at such offense.**—Any sheriff, who connives at the commission of the offense prohibited by the preceding section, by any constable, bailiff, or deputy-sheriff, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than five years.

5103 (3926) (4154) (3593) (52). **Extortion.**—Any justice of the peace, clerk, sheriff, or other officer, who is by law authorized to receive fees for services rendered by him in his official capacity, and who knowingly takes a fee or fees for any service not actually rendered by him, or knowingly takes any greater fee or fees than are by law allowed for any services actually rendered by him, must, on conviction, be fined not less than twenty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. (Form 46.)

Collier's case, 55 Ala. 125; Cleaveland's case, 34 Ala. 254.

5104 (3927) (5022) (3539) (3068). **Probate judge corruptly receiving illegal fees.**—Any judge of probate, who corruptly receives any fee or item of costs not authorized by law, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars; and the grand jury must present an indictment, if justified by the evidence. Upon such conviction, the office shall be vacated, and the fact of such conviction shall be certified to the governor by the presiding judge.

5105 (3931) (4170). **Dealing in county claims by county officers.** Any public officer, who, directly or indirectly, by himself or through another, purchases, deals, or traffics, in any manner whatever, in any claim payable out of the county treasury, or out of the fine and forfeiture fund of the county, must, on conviction, be fined for each offense not less than ten, nor more than fifty dollars; but nothing contained in this section prevents any officer from receiving in good faith any county claim in payment of a debt due him. This section must be given in charge to the grand jury; and the solicitor is required to summon the county treasurer before the grand jury to give evidence against any one for a violation of this section.

The clerk in the office of the judge of probate is liable as an officer.—Scruggs's case, 111 Ala. 60. A grand-jury ticket is included.—Ib.

5106 (3933) (4156) (3594) (53). **False certificate by officer.** Any officer authorized to take proof or acknowledgment of any conveyance of property, real or personal, who, with intent to injure or defraud, or to enable any other person to injure or defraud, willfully certifies that any such conveyance was duly proved or acknowledged, when such proof or acknowledgment was not in fact made, or was not made on the day stated in such certificate, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than ten years.

5107 (3934) (4157) (3595) (54). **Refusal of officer to take or certify proof or acknowledgment of deed, etc.**—Any officer authorized by law to take and certify the proof or acknowledgment of any

deed, conveyance, or other instrument authorized or required by law to be recorded, who refuses to receive or certify the proof or acknowledgment of any such deed, conveyance, or other instrument, or to record any deed, conveyance, or other instrument, properly proved or acknowledged and certified, which it is his duty to record (his lawful fees for any such services being first tendered to him), must, on conviction, be fined not less than fifty, nor more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

5108 (3935) (4155). **Officer contracting for, etc., profit or advantage for publication of notice.**—Any officer whose duty it is to give public notice by advertisement in any newspaper, who makes any contract or agreement, whereby any advantage, gain, or profit is to accrue to him, or who demands or receives, directly or indirectly, any consideration whatever in or about such publication, must, on conviction, be fined one hundred dollars.

1887, p. 117, §13. **5109. County superintendent demanding or receiving gift, etc., from teacher to influence official action.**—Any county superintendent, who demands, receives or takes from any teacher any return, commission, rebate, fee or gratuity to influence him in the performance of any official duty, must, on conviction, be fined not less than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

5110 (3971) (4838) (4167) (615). **Failure of sheriff to execute process.**—Any sheriff or other officer, who fails negligently to execute any lawful process which it is his duty to execute, requiring the arrest of any person charged with a public offense, must, on conviction, be fined not less than one hundred dollars.

5111 (3972) (4128) (3571) (30). **Refusal to execute process, or receive prisoner into jail.**—Any sheriff or other officer, who willfully or corruptly refuses to execute any lawful process which it is his duty to execute, requiring the arrest of any person charged with a public offense, or willfully or corruptly omits to execute such process, or willfully or corruptly refuses to receive into any jail under his charge any offender lawfully committed thereto, and ordered to be confined therein on any criminal charge, conviction, or lawful process whatever, must, on conviction, be fined not less than five hundred, nor more than two thousand dollars.

5112 (3973) (4129) (3572) (31). **Refusal to receive prisoner into custody.**—Any jailer or other officer, who willfully refuses to receive into his custody any person lawfully committed thereto, on any criminal charge or conviction, must, on conviction, be fined not more than five hundred dollars.

5113 (3928). **Failure of sheriff to keep book, etc., showing accounts for feeding prisoners, etc.**—Any sheriff, who fails to enter into a book to be kept by him for that purpose any account paid him by the state for feeding prisoners, or to keep such book in his

office as one of the public records thereof, or to lay the same before the grand jury at each term of the circuit or city court held in his county, or, upon the expiration of his term of office, to turn the same over to his successor, as required by law, is guilty of a misdemeanor.

5114 (3930). **Sheriff receiving unlawful pay for feeding prisoners.**—Any sheriff, who knowingly receives from the state for feeding a prisoner or prisoners any sum of money to which he is not lawfully entitled, must, on conviction, be punished as if he had stolen it.

5115 (3936). **Failure of sheriff to pay over costs taxed for removing prisoners.**—Any sheriff, who, having collected, on execution or otherwise, from any defendant convicted for a criminal offense, the fees or compensation allowed to sheriffs as mileage for themselves, guards and prisoners, on removing such defendant under the order of any court or judge upon a change of venue, or when such defendant is arrested and confined in a county other than that in which he is triable, fails for ninety days after the collection thereof to pay the same to the state treasurer, must, on conviction, be fined not less than fifty, nor more than five hundred dollars.

5116 (3929). **Failure of clerk to receipt for and pay over money collected for feeding prisoners.**—Any clerk of the circuit or city court, who fails to give to the officer paying to him any money collected for feeding prisoners in jail a receipt in duplicate therefor, or to pay over to the state treasurer any such money so received by him, as required by law, is guilty of a misdemeanor.

5117 (3932) (4169). **County officers interested in county contracts, or hire of county convicts.**—Any judge of probate, tax-collector, tax-assessor, sheriff, clerk of the circuit court, solicitor, or county treasurer, members of the court of county commissioners or board of revenue, or any other state or county officer, who takes any contract for work or services of the county, or is employed in any way under such contract, or is interested in any contract for hire of county convicts, or sells any goods or supplies to the county, or is in anywise pecuniarily interested in any such contract or sale, as principal or agent, must, on conviction, be fined not less than fifty, nor more than one thousand dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county, for not exceeding twelve months; but nothing in this section shall apply to the sale or purchase of drugs or medicines for the use of prisoners or paupers.

5118. Judicial officer or clerk failing to report hard labor sentences to judge of probate.—Any judicial officer or clerk who fails to report in writing to the judge of probate, as required by law, the name of any person sentenced to hard labor for the county, the length of such sentence, the date of its commencement and the amount of the costs therein, must, on conviction, be fined not less than twenty-five dollars. This section must be given in special charge to the grand jury. Feb. 18, 1895, p. 849, §§113, 114.

5119 (3978) (4183). **Failure to discharge duty as to defendant's**

performing hard labor before conviction.—Any officer, who fails to perform any duty imposed upon him by section 5239 (4290), must, on conviction, be fined not less than fifty, nor more than five hundred dollars.

5120 (3979) (4177). **Failure of county commissioners to put convicts to hard labor.**—If any court of county commissioners fail or refuse to provide for the carrying out of the provisions of this Code in relation to hard labor for the county, and to put convicts to hard labor as provided therein, each member of such court who fails or refuses, must, on conviction, be fined not more than two hundred dollars.

5121 (3980). **Failure of certain officers to perform duty in reference to jail.**—Any judge of probate, sheriff, clerk of the circuit court, or member of the court of county commissioners, who negligently or willfully fails or refuses to perform any duty imposed upon him by law in reference to the county jail, the construction, examination, or the keeping thereof in the condition required by law, or the making of appropriations for keeping the same in the condition required by law, or any county treasurer failing to pay, in the order prescribed, any warrant of the court of county commissioners drawn for an appropriation for keeping the county jail in the condition required by law, must, on conviction, be fined not more than one hundred dollars.

5122 (3983) (4490) (3788) (240). **Failure to deliver jail, etc., to successor.**—Any person in charge of the jail, or having in his possession any paper, or other thing thereto belonging, on the death, resignation, removal from office, or expiration of the term of office, of any sheriff, or of any coroner acting as sheriff, who fails on demand to deliver the same to his successor, or other person authorized by law to take charge thereof, must, on conviction, be fined not less than three hundred dollars.

5123 (3960) (4176). **Failure of sheriff, clerk, or register to pay over money to successor.**—Any sheriff, clerk of the circuit or city court, or register in chancery, who, having in his hands, at the expiration of his official term, any money held by him subject to the further order of any court, on demand of his successor in office, fails to pay over to him such money, must, on conviction, be fined not less than fifty, nor more than five hundred dollars.

5124 (3961) (4148). **Judicial or ministerial officer becoming bail in certain cases.**—Any judicial, executive, or ministerial officer of any court having criminal jurisdiction, who becomes bail for any prisoner, or other person under any criminal accusation, or signs any bond or other obligation for the release or appearance of such person before himself, or before any other officer or court, must, on conviction, be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned in the county jail for not more than twelve months.

5125 (3962) (4181). **Failure of justice to keep and report docket of criminal cases.**—Any justice of the peace, or notary public hav-

ing and exercising the jurisdiction of a justice of the peace, who fails to keep or report to the grand jury a docket of criminal cases, as required by law, must, on conviction, be fined not less than twenty, nor more than one hundred dollars.

5126 (3940) (4146). **Solicitor commencing prosecution on his own affidavit.**—Any solicitor, who commences a prosecution for any criminal offense by his own affidavit, except for an offense against his person or property, or for a violation of the revenue law, or unless the affidavit be upon his personal knowledge of the commission of the offense, must, on conviction, be fined not less than fifty dollars.*

5127 (3941) (4143) (879) (745). **Attorney appearing without authority.**—Any attorney appearing for a person without being employed must, on conviction, be fined not less than five hundred dollars, and shall be incompetent to practice in any court of this state.

5128 (3942) (4144). **Attorney practicing in court of which he is clerk or employe.**—Any person, who practices law in any court in which he is a clerk, deputy-clerk, or regularly employed to perform any of the ministerial duties thereof, must, on conviction, be fined not less than one hundred dollars.

5129 (3943). **Certain ministerial officers prohibited from practicing law.**—Any sheriff, coroner, or deputy thereof, or constable, who practices law in any court of this state, must, on conviction, be fined not less than one hundred dollars.

5130 (3944). **Practicing law by register in chancery, or his partner; when prohibited.**—Any register in chancery, who practices law in the court of which he is register, or any partner of such register, who practices in such court, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars; and this section shall be given in special charge to the grand jury.

5131 (3945) (4179) (636). **Judges not to practice law.**—Any judge of a court of record in this state, who practices law in any of the courts of this state, or of the United States, must, on conviction, be fined in such sum as the jury may assess.

5132 (3946) (4172). **Appointment by judge of probate of guardian ad litem.**—Any judge of probate, who appoints as guardian ad litem any clerk, employe, or any person connected with his office, or any person related to him by consanguinity or marriage, must, on conviction, be fined fifty dollars.

5133 (3949) (4158) (772) (652). **Refusal of public officer to per-**

*An act approved December 3, 1896 (Pamph. Acts, p. 49), entitled "An act to prohibit the law partner or partners of circuit, city, or county solicitors of this state from defending cases in any court in this state, where said solicitor prosecutes," is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That from and after the passage of this act, it shall be unlawful for the law partner or partners of any circuit, city or county solicitor of this state, to defend criminal cases of any character, kind or description in any court in this state, in which said solicitor is the prosecuting officer.

"SEC. 2. *Be it further enacted*, That any person who is guilty of a violation of this act shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars."

mit examination of records.—Any public officer, having charge of any book of record, who shall refuse to allow any person to examine such record free of charge, must, on conviction, be fined not less than fifty dollars.

5134 (3953) (4162). **Failure to give notice of omission to file official bonds.**—Any officer, who omits to give the notice of failure by a public officer to file his official bond, as required by law, must, on conviction, be fined not less than one hundred dollars.

5135 (3954) (4163). **Failure to indorse date of filing official bond.**—Any officer, who fails to indorse the date of the filing of an official bond, as required by law, must, on conviction, be fined not less than fifty dollars.

5136 (3963) (4182). **Failure of justice, notary, or constable to report and pay over fines.**—Any justice of the peace, notary public having and exercising the jurisdiction of justice of the peace, or constable, who fails to report to the county treasurer, under oath, on or before the first day of each term of the circuit or city court, the amount of fines and forfeitures collected by him, or who, after deducting therefrom the amount due for fees in cases in which the defendant was acquitted, or insolvent and unable to pay after conviction, fails to pay the balance to the county treasurer, must, on conviction, be fined not less than ten, nor more than one hundred dollars.

5137 (3964) (1333) (1086) (860). **Failure to deliver notary's register to probate judge on demand.**—Any person, who, after the death, resignation, removal, or expiration of the term of office of any notary public, having in possession the register kept by such notary public, refuses, on demand, to deliver the same to the judge of probate of the county, must, on conviction, be fined not less than one hundred dollars.

5138 (3965) (536) (631) (556). **Failure of certain military officers to make report as to public arms.**—Any quartermaster-general, brigade quartermaster, or adjutant-general, who fails to make any report required of him by law concerning public arms and accoutrements, must, on conviction, be fined not less than fifty dollars.

5139 (3902) (4273). **Failure of commissioners' court to publish semi-annual statements.**—If any court of county commissioners fail to publish semi-annual exhibits of the receipts and expenditures of moneys for and on account of their respective counties, as required by law, each member of such court must, on conviction, be fined not more than one hundred dollars for each offense.

5140 (3966) (4178) (905) (1171). **Failure of commissioners to levy tax to rebuild jail.**—If any court of county commissioners fail to levy a tax to erect or repair a county jail, when necessary, the persons composing such court are severally guilty of a misdemeanor, and must, on conviction, be fined not less than fifty dollars; but any member thereof may exonerate himself from such fine by proving that he was in favor of levying a tax sufficient for the erection or repair of the county jail, but was overruled by his colleagues.

5141 (3948) (4180) (657). **Failure to take, keep and bind news-**

papers.—Any probate judge, clerk of the circuit court, or register in chancery, who fails to subscribe for, take, file, cause to be bound, and safely keep in his office weekly newspapers, as required by law, must, on conviction, be fined not less than fifty dollars; and one conviction shall not bar a subsequent conviction for a continuing neglect.

5142 (3957) (4167) (2870). **Failure of sheriff to make deed of land.**—Any sheriff, who, having made sale of real estate, or any interest therein, under legal process, after payment of the purchase-money and on demand of the purchaser, and payment or tender of the proper fees, fails to execute a conveyance to the purchaser, must, on conviction, be fined not less than one hundred dollars.

5143 (3958) (4167) (2870). **Failure of register in chancery or commissioner to make deed of land.**—Any register in chancery, or commissioner, who, having made sale of any real estate, or any interest therein, under any decree of the chancery or probate court, after the order of the court authorizing it, fails, on demand, to execute a conveyance to the purchaser, must, on conviction, be fined not less than one hundred dollars.

5144 (3959) (4175). **Failure to keep direct and reverse indexes.** Any probate judge, clerk of the circuit or city court, or register in chancery, who fails to keep direct and reverse indexes of all books and records in his office, as required by law to be kept, must, on conviction be fined not more than five hundred dollars.

5145 (3947) (4173) (812) (685). **Willful neglect of duty by judge of probate.**—Any judge of probate, who knowingly and willfully does any act contrary to the duties of his office, or knowingly omits or refuses to perform any duty required of him by law, must, on conviction, be fined not more than two hundred dollars, if there be no other punishment prescribed for such act or omission, and be removed from office.

5146 (3950) (4159) (773) (653). **Neglect of duty by clerk or register.**—Any clerk of any court of record, or register in chancery, who fails to perform any duty imposed on him, for the failure to perform which no other punishment is provided, must, on conviction, be fined not exceeding two hundred dollars.

Chapman's case, 73 Ala. 20.

5147 (3939) (4264) (932) (797). **Failure of duty by county treasurer.**—Any county treasurer, who fails to discharge any duty required of him by law, is guilty of a misdemeanor.

ARTICLE 2.

OFFENSES BY OFFICERS CONCERNED IN COLLECTING THE REVENUES OF THE STATE.

5148 (3900). **Failure of assessor or collector to list, etc., persons liable to poll-tax.**—Any tax-assessor, who fails to note on each assessment-list the township and range in which each person liable

for poll-tax resides, or to note the number of each race in each township liable to poll-tax, as required by law, or any tax-collector who fails to keep a separate account of the amount of poll-tax paid by persons of the respective races in each township, or who fails to furnish a statement thereof to the county superintendent of education, on payment of such poll-tax to him, as required by law, must, on conviction, be fined not less than one hundred dollars.

Feb. 18, 1895, p. 1192, §23.

5149 (3904) (4278). **Failure of tax-assessor or deputy to administer oath to taxpayer.**—Any tax-assessor or deputy tax-assessor who returns the tax-list of any taxpayer as having been sworn to by such taxpayer when in fact it was not sworn to, is guilty of a misdemeanor. This section must be given in special charge to the grand jury, and it is their duty, whenever the evidence justifies it, to return an indictment against such tax-assessor or deputy tax-assessor.

5150 (3905, 3898) (4276). **Failure or neglect of duty under revenue law not otherwise provided.**—Any officer, on whom any duty is imposed by the revenue law, who fails or neglects to perform such duty, if there is no other punishment provided for such failure or neglect, must, on conviction, be fined not less than twenty, nor more than one thousand dollars.

5151 (3901) (4271). **Dealing in state securities.**—Any tax-collector, or other person engaged in collecting the revenues of the state, who buys, sells, or otherwise trades in state warrants, state certificates, or other securities of the state, must, on conviction, be imprisoned in the penitentiary for not less than one, nor more than five years, and fined not less than fifty, nor more than one thousand dollars, one or both, at the discretion of the court.

ARTICLE 3.

BUYING, SELLING, ILLEGALLY ASSUMING AND WRONGFULLY HOLDING OFFICE.

5152 (3967) (4171). **Bargaining away and bargaining for office or deputation thereof.**—Any person elected or appointed to any office, state, county, or municipal, who bargains away such office, or corruptly bargains away any deputation thereof, or any person bargaining with such officer for such office, or corruptly bargaining with him for any deputation thereof, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not less than six, nor more than twelve months.

5153 (3968) (4168) (145) (106). **Assuming office by one ineligible.**—Any person, being disqualified by law, who, by election or appointment, enters upon any public office, must, on conviction, be fined not less than one hundred dollars.

5154 (3938) (153) (148) (109). **Exercising duties of office without obtaining commission.**—Any state or county officer required by law to be commissioned, who exercises any of the duties of the office to which he has been elected or appointed, without having first obtained his commission, must, on conviction, be fined not less than five, nor more than twenty dollars.

5155 (3951) (4160) (156) (117). **Failing to take and file oath.** Any officer or deputy required by law to take and file an oath of office, who enters upon the duties of his office, without first taking and filing such oath in the proper office, must, on conviction, be fined not less than two hundred dollars.

5156 (3952) (4161) (166) (127). **Acting officially before filing bond.**—Any public officer required by law to give bond, who performs any official act before his bond is approved and filed, as required by law, must, on conviction, be fined not less than five hundred dollars.

5157 (3955) (4164, 4165) (179, 188) (140, 149). **Failure of officer to file new or additional bond.**—Any officer giving a new or additional bond, who fails to file the same in the proper office within ten days after its approval, must, on conviction, be fined not less than five hundred dollars.

5158 (3956) (4166). **Failure to deliver property and papers of office to successor.**—Any person, who fails or refuses on demand to deliver the books, papers, property and money belonging to an office to the qualified successor in office, as required by law, must, on conviction, be fined not less than two hundred dollars.

5159. Clerk in office of judge of probate failing to deliver books, etc., to successor.—Any clerk, or person acting as clerk in the office of the judge of probate, who obtains possession of the books, papers, money or property belonging or appertaining to such office pending a vacancy therein, and who fails or refuses on demand to deliver such books, papers, money or property to the lawfully qualified successor of the judge of probate, must, on conviction, be fined not less than two hundred dollars. Dec. 13, 1892, p. 143, §2.

CHAPTER 176.

PEACE PROCEEDINGS AND PROCEEDINGS TO PRESERVE ORDER.

ARTICLE 1.—CONSERVATORS OF THE PEACE AND MAGISTRATES. 5160, 5161.
2.—PROCEEDINGS BEFORE MAGISTRATES TO KEEP THE PEACE. 5162–5181.
3.—EMPLOYMENT OF MILITARY FORCES TO PRESERVE THE PEACE AND ENFORCE THE LAWS. 5182-5197.

ARTICLE 1.

CONSERVATORS OF THE PEACE AND MAGISTRATES.

5160 (4679) (4025) (3956) (407). **Sheriff chief conservator of peace; duty, and how executed.**—The sheriff is the principal conservator of the peace in his county, and it is his duty to suppress all riots, unlawful assemblies and affrays; in the execution of which duty, he may summon to his aid as many of the men of his county as he thinks proper, and any military company, or companies, as provided in article 3 of this chapter.

5161 (4680) (4026) (3957) (408). **Who are magistrates; authority to bind over to keep the peace.**—The judges of the supreme and circuit courts, and the chancellors, throughout the state; the judges of the city courts, the judges of probate, the judges of the county courts, and justices of the peace, in their respective counties; and the mayor or chief officer of any incorporated town or city, within the limits of their respective corporations, are magistrates within the meaning of this chapter, and authorized to require persons to give security to keep the peace in the manner provided in the next article.

As to notaries, ex officio justices, see Matthews's case, 96 Ala. 62; Judge of county court, Ex parte Barker, 87 Ala. 8.

ARTICLE 2.

PROCEEDINGS BEFORE MAGISTRATES TO KEEP THE PEACE.

5162 (4681) (4027) (3958) (409). **Complaint before magistrate; testimony taken and subscribed by party.**—Whenever complaint is made to a magistrate, that any person has threatened, or is about to commit, an offense on the person or property of another, he must examine the complainant, and any witness he may produce, on oath, reduce such examination to writing, and cause it to be subscribed by the party so examined.

Noles's case, 24 Ala. 672.

5163 (4682) (4028) (3959) (410). **When warrant of arrest to issue; contents.**—If, on such examination, it appears that there is reason to fear the commission of any such offense by the person complained of, the magistrate must issue a warrant, directed to any lawful officer of the state, containing the substance of the complaint, and commanding such officer forthwith to arrest the person complained of, and bring him before him, or some other magistrate having jurisdiction of the matter.

Noles's case, 24 Ala. 672; Duckworth v. Johnston, 7 Ala. 578; Crumpton v. Newman, 12 Ala. 199.

5164 (4683) (4029) (3960) (411). **Executed by whom.**—Such warrant may be executed by the sheriff, or other officer acting as sheriff, or his deputy, or by any constable of the county, or by any marshal or policeman of any incorporated city or town in the county.

5165 (4684) (4030) (3961) (412). **Hearing; discharge of defendant.**—When the person complained of is brought before the magistrate, he and his witnesses must be heard in his defense; and if, on hearing the witnesses on both sides, it appears that there is no just reason to fear the commission of the offense, the defendant must be discharged.

5166 (4685) (4031). **Defendant competent witness in his own behalf.**—In all proceedings to keep the peace, the defendant shall be a competent witness to give evidence in his own behalf.

5167 (4686) (4032) (3962) (413). **Costs on plaintiff, if complaint unfounded.**—If the magistrate regard the complaint as unfounded, or frivolous, he may order the complainant to pay the costs of prosecution; and, upon making such order, an execution may issue to coerce the payment thereof.

5168 (4687) (4033) (3963) (414). **Security to keep peace; when required.**—If, however, there is just reason to fear the commission of such offense, the defendant must be required to give security to keep the peace, in such sum as the magistrate may direct, towards all the people of this state, and particularly towards the person against whom, or whose property, there is reason to fear the offense may be committed, for such time as the magistrate may direct, not more than twelve, nor less than six months; but the defendant must not be required to appear at the next term of the circuit or city court, unless he has actually committed an offense cognizable in such court.

Goodwin v. Governor, 1 Stew. & Port. 465.

5169 (4688) (4034) (3964) (415). **Form of undertaking to keep the peace.**—The undertaking to keep the peace may be, in substance, as follows:

"The State of Alabama, } We (here insert the names of the de-
——— county. } fendant and his sureties), agree to pay to the State of Alabama one thousand dollars (or such sum as the magistrate directs) if the said (here insert the name of the defendant) does not keep the peace for twelve months (or as the case may be) from this undertaking, towards all the citizens of this state, and par-

ticularly towards (here insert the name of the person against whom, or whose property, there is reason to fear the commission of the offense). Dated —— day of ———, 18—.

(Signed) A. B.
C. D.
E. F.

Approved, L. M., Justice of the Peace (or other magistrate, as the case may be)."

5170 (4689) (4035) (3965) (416). **Defendant discharged on giving, and committed on failure to give bond; commitment.**—Upon such undertaking, with sufficient sureties, being given, the defendant must be discharged; and if not given, the magistrate must commit him to jail until he gives the same, specifying in the warrant of commitment the cause thereof, the time he is required to keep the peace, and towards whom particularly, and also the sum in which security is required.

5171 (4690) (4036) (3966) (417). **Discharge by sheriff on giving undertaking.**—Any person, committed under the provisions of the preceding section, may be discharged by the sheriff of the county in which he is detained, upon entering into an undertaking to keep the peace, with sufficient sureties, in the sum, and for the term required by the magistrate.

5172 (4691) (4037) (3967) (418). **Costs on defendant and execution.**—In all cases where a person is required to keep the peace, the magistrate may order the costs of the prosecution, or any part thereof, to be paid by such person; and an execution may issue for the collection of the same.

5173 (4692) (4038) (3968) (419). **Appeal to circuit or city court.** Any person required to keep the peace under the provisions of the preceding sections of this article, by any other magistrate than a judge of the supreme or circuit court, or chancellor, on entering into an undertaking, with sufficient sureties, in a sum equal to that required of him to keep the peace, for the prosecution of his appeal, and in the meantime to keep the peace, is entitled to an appeal to the next circuit or city court of the county; and the magistrate from whose order the appeal is taken may, in such case, require such witnesses as he thinks necessary to enter into an undertaking, in the sum of one hundred dollars each, to appear at such court. Any person committed to jail by a magistrate for failing to give security to keep the peace may appeal to the circuit or city court, if in session, and if not in session, to its next term, and may thereupon be discharged from custody on giving bond with surety, in such penalty as the judge of any court of record may prescribe, conditioned for his appearance at such term of the court, and to keep the peace towards all the people of the state, for the period of twelve months, unless sooner discharged by law; and any person, who has been required to give bond to keep the peace, and has given such bond, may appeal, in like manner, upon giving security for the costs of such appeal;

but such appeal shall not supersede the obligation of such peace bond, unless the court which tries such appeal shall discharge the defendant.

Tomlin's case, 19 Ala. 9; Ex parte Coburn, 38 Ala. 237.

5174 (4693) (4039) (3969) (420). **Form of undertaking on appeal.**—The undertaking on the appeal, under the provisions of the preceding section, may be, in substance, as follows:

"The State of Alabama,) An order having been made by A. B., a
——— county.) justice of the peace for said county (or other magistrate, as the case may be), requiring (here insert the name of the defendant) to keep the peace towards all the people of this state, and particularly towards (here insert the name of the person against whom, or whose property, there is reason to fear the offense may be committed), from which order the said defendant has taken an appeal to the next circuit court (or city court, as the case may be) of said county; now, therefore, we (here insert the names of the defendant and his sureties), agree to pay the State of Alabama (here insert the amount required by the magistrate) dollars, if the said defendant fail to prosecute his appeal to effect, and in the meantime to keep the peace towards (here insert the name of the person against whom, or whose property, there is reason to fear the offense may be committed). Dated this —— day of ——, 18—.

(Signed) A. B.
C. D.
E. F.

Approved, L. M., Justice of the Peace (or other magistrate, as the case may be)."

5175 (4694) (4040) (3970) (421). **Undertaking returned to court; failure subjects magistrate to attachment for contempt.** Any undertaking given under any provision of this article must be returned by the magistrate taking the same to the clerk of the circuit or city court of the proper county, by the first day of the next court; and failing so to do, he may be attached for contempt.

5176 (4695) (4041) (3971) (422). **Trial on appeal de novo; court may require new bond; costs and execution.**—The court to which an appeal, under the provisions of this article, is prosecuted, must examine the case anew, and may confirm the order of the magistrate, or discharge the appellant; or require him to enter into a new undertaking, with sufficient sureties, to keep the peace, in such sum and for such term as the court thinks proper; and may make such order in relation to the costs of the prosecution as seems just, which order may be enforced by execution.

5177 (4696) (4042) (3972) (423). **Effect of undertaking when appeal not sustained.**—If the appellant fails to sustain his appeal, his undertaking remains in full force and effect as to any breach thereof, and also stands as security for any costs which are ordered by the court to be paid by the appellant; and execution may issue therefor against all parties to the same.

5178 (4697) (4043) (3973) (424). **When offense threatened in presence of court or magistrate.**—Any person, who, in the presence of a court or magistrate, commits or threatens to commit an offense against the person or property of another, or contends with another with angry words, may be ordered, without process, to enter into an undertaking to keep the peace for a term not exceeding twelve months, and, in case of refusal, be committed as in other cases.

5179 (4698) (4044) (3974) (425). **Courts may require peace bonds of persons convicted.**—The circuit courts, the city courts and the county courts may also, on the conviction of any person for an offense against the person or property of another, when necessary for the public good, require the defendant to enter into an undertaking, with sureties, to keep the peace for not exceeding twelve months, and, on his failure, may commit him.

5180 (4699) (4045) (3979) (426). **Forfeiture of peace bond; how ascertained.**—An undertaking to keep the peace is forfeited by the commission by the defendant of any offense upon the person or property of another; which may be ascertained by a jury, without the conviction of the defendant therefor, in the circuit or city court, on ten days' notice to the parties against whom the forfeiture is sought.

5181 (4700) (4046) (3976) (427). **Court may remit penalty.** The court, on a forfeiture of an undertaking to keep the peace, may remit any portion of the amount specified therein, according to the circumstances of the case.

ARTICLE 3

EMPLOYMENT OF MILITARY FORCES TO PRESERVE THE PEACE AND ENFORCE THE LAWS.

5182 (4701). **When governor may call out military.**—The governor may call out all or such portion of the militia and volunteer forces of the state, as he may deem advisable, to execute the laws, suppress insurrection, and repel invasion.

5183 (4702). **Use of military prohibited, except as hereinafter provided.**—No portion of the Alabama state troops shall be called into service, or be used in the enforcement of the laws of this state, without the authority of the governor, except in cases hereinafter provided in this article.

5184 (4703). **Civil officers may call on governor for troops when posse comitatus insufficient.**—Whenever any circuit judge, chancellor, city-court judge, sheriff, mayor, or intendant of any incorporated city, town, or village, shall have reasonable cause to apprehend the outbreak of any riot, rout, tumult, insurrection, mob, or combination to oppose the enforcement of the laws by force or violence, within the jurisdiction in which such officer is by law a conservator of the peace, which cannot be speedily suppressed or

effectually prevented by the ordinary posse comitatus and peace-officers, it shall forthwith become the duty of such judge, chancellor, sheriff, mayor, or intendant, to report the facts and circumstances in writing to the governor, and request him to order out such portion of the militia or volunteer forces of this state as may be necessary to enforce the laws and preserve the peace; and it shall thereupon be the duty of the governor, if he deems such apprehension well founded, to order out, or direct to be held in readiness, such portion of the militia or volunteer forces of the state as he may deem advisable for the proper enforcement of the law; and he may direct the officer in command of the troops to report to the officer making such application, or to any other officer named in this section, to obey the orders of such civil officer; or, if the governor deem it advisable, may specially instruct the officer in command of such troops as to the duties required of them, and direct their execution under the immediate control of the governor.

5185 (4704). **When civil officers may direct officer in command to call out troops before applying to governor.**—Whenever any riot, outbreak, tumult, mob, or rout, shall occur or be imminent, or there shall be an assemblage of persons over ten in number, with the intent to commit a felony, or to offer violence to person or property, or with the intent to oppose or resist, by force or violence, the execution of any law of this state, or any lawful process of any court or officer thereof, or the due execution, according to law, of any legal ordinance, or by-law of any municipal corporation, or any lawful process duly issued by any officer thereof, under such circumstances that timely application cannot be made to the governor, and action had thereon by him, as provided in the last preceding section, any of the civil officers mentioned in the last preceding section, if he ascertains, or has good reason to believe, that the ordinary posse comitatus, or civil power of the county, city, town, or village, where such violation of the laws and peace of this state occurs, or appears imminent, are, or would be unable to promptly suppress or prevent the same, may, without first making application to the governor, direct the highest commissioned officer of the Alabama state troops, in the county where such lawlessness exists, or is threatened, to call out and report with his command to such civil officer, to enforce the laws, and to preserve the peace; and it shall be the duty of such commander, and all persons composing such command, to obey such order.

5186 (4705). **Dispersing riot, mob, or unlawful assembly; what must be done before using military force; exceptions.**—Before using any military force in the dispersion of any riot, rout, tumult, mob, or other lawless or unlawful assembly, or combination mentioned in this article, it shall be the duty of the civil officer calling out such military force, or some other conservator of the peace, or if none be present, then of the officer in command of the troops, or some person by him deputed, to command the persons composing such riotous, tumultuous, or unlawful assemblage or mob, to dis-

perse and retire peaceably to their respective abodes and business; but, in no case, shall it be necessary to use any set or particular form of words in ordering the dispersion of any riotous, tumultuous, or unlawful assembly; nor shall any such command be necessary, where the officer or person, in order to give it, would necessarily be put in imminent danger of loss of life, or great bodily harm, or where such unlawful assemblage or mob is engaged in the commission or perpetration of any forcible and atrocious felony, or in assaulting or attacking any civil officer, or person lawfully called to aid in the preservation of the peace, or is otherwise engaged in actual violence to persons or property.

5187 (4706). **Failure to disperse a felony.**—Any person or persons, composing or taking part in any riot, rout, tumult, mob, or lawless combination or assembly, mentioned in this article, who, after being duly commanded to disperse, as hereinbefore provided in the last section, willfully and intentionally fails to do so as soon as practicable, is guilty of a felony, and must, on conviction, be imprisoned in the penitentiary for not less than one, nor more than two years.

5188 (4707). **Duty of officer on failure of persons to disperse; when injury to person or property excusable.**—After any person or persons, composing or taking part, or about to take part in any riot, mob, rout, tumult, or unlawful combination or assembly, mentioned in this article, shall have been duly commanded to disperse, or where the circumstances are such that no such command is requisite under the provisions of this article, the civil officer to whom such military force is ordered to report, or if there be no civil officer present, then such military officer (or if such command is acting under the direct order of the governor, then such officer within the limits provided in his instructions), shall take such steps and make such disposition for the arrest, dispersion, or quelling of the persons composing or taking part in any such mob, riot, tumult, outbreak, or unlawful combination or assembly, mentioned in this article, as may be deemed requisite to that end; and if, in doing so, any person is killed, wounded, or otherwise injured, or any property injured or destroyed, by the civil officer, or officer or member of the militia or state troops, or other person lawfully aiding them, such civil officer, military officer, or member of the militia or state troops, or person lawfully aiding them, shall be held guiltless in all cases, unless it be made to appear that such killing, wounding, or injury to person, or injury or destruction to property, was wanton or malicious, and without any seeming necessity or excuse.

5189 (4708). **Throwing missiles at state troops or civil officer a felony.**—Any person, who unlawfully assaults, or fires at, or throws any missile at, against, or upon any member, or body of the militia or state troops, or civil officer, or other person lawfully aiding them, when assembling or assembled for the purpose of performing any duty under the provisions of this article, must, on conviction, be

imprisoned in the penitentiary for not less than two years, nor more than five years.

5190 (4709). **When commanding officer may order troops to quell riot.**—If any portion of the militia or state troops, or person lawfully aiding them in the performance of any duty under the provisions of this article, are assaulted, attacked, or are in imminent danger thereof, the commanding officer of such militia or state troops need not await any orders from any civil magistrate, but may at once proceed to quell such attack, and take all other needful steps for the safety of his command.

5191 (4710). **Persons must disperse when hostile act committed by mob on military; penalty.**—Whenever any shot is fired, or missile thrown at, against, or upon any body of state troops or militia, or upon any officer or member thereof, assembling or assembled for the performance of any duty under the provisions of this article, it shall forthwith be the duty of every person in the assemblage from which such shot is fired, or missile thrown, to immediately disperse and retire therefrom, without awaiting any order to do so; and any person knowing or having reason to believe, that a shot has been so fired, or missile thrown from any assemblage of which such person forms a part, or with which he is present, and failing, without lawful excuse, to retire immediately from such assemblage, is guilty of a misdemeanor, and must, on conviction, be imprisoned in the county jail for not less than one month, nor more than one year; and any person so remaining in such assemblage, after being duly commanded to disperse, is guilty of a felony, and must, on conviction, be imprisoned in the penitentiary for not less than one, nor more than two years.

5192 (4711). **Power of civil or military officer to clear streets, etc.**—Whenever any rout, riot, or mob, has occurred, or is progressing, or is so imminent that any portion of the militia or state troops is, or has been called out for the performance of any duty under the provisions of this article, it shall be lawful for the civil officer under whose orders the militia or state forces are acting, or the commanding officer of such militia or state troops, if it be deemed advisable in subduing or preventing such mob or riot, or the outbreak thereof, to prohibit all persons from occupying or passing on any street, road, or place in the vicinity of the rout, mob, or riot, or place where the same is threatened, or where the militia or state troops may be for the time being, and otherwise to regulate passage and occupancy of such streets and places; any person, after being duly informed of such prohibition or regulation, who willfully and intentionally, without any lawful excuse, attempts to go or remain on such street, road, or place, and fails to depart after being warned to do so, is guilty of a misdemeanor, and must, on conviction, be fined not more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor, for not more than one hundred days; and, in such case, the officer in command of the troops or militia may forthwith arrest persons so offending, and turn them over to some civil magistrate.

5193 (4712). **Troops guarding jail or prisoner may prevent persons coming near; penalty against intruders.**—The commanding officer of any body of militia or state troops, guarding any jail, public building, or other place, or escorting any prisoner, may, if he deem it advisable, prescribe a reasonable distance in the vicinity of such jail, public building, or other place, or escort of such prisoner, within which persons shall not come; and any person, knowingly and willfully, without lawful excuse, coming within such limits without the permission of such officer, and refusing to depart after being ordered to do so, shall be deemed guilty of a misdemeanor, and must, on conviction, be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three hundred days; and any person, so coming and remaining in such limits in the nighttime, is guilty of a felony, and must, on conviction, be imprisoned in the penitentiary for not less than one, nor more than two years; and, in either case, it shall be the duty of the officer commanding such troops or militia forthwith to arrest persons thus offending, and turn them over to some civil magistrate.

5194 (4713). **Report to governor, who may direct troops in all cases.**—Whenever any militia or state troops are ordered out by a civil magistrate, under the provisions of this article, without first obtaining an order from the governor, it shall be the duty of the civil magistrate, and also of the commander of such militia or state troops, to report the facts as soon as practicable to the governor; and in all cases the governor may direct such militia or state troops to perform their duties under his immediate orders.

5195 (4714). **Authority of governor to order out military forces in aid of civil authorities; regulations.**—Whenever there is any insurrection or outbreak of a formidable character, which has overawed, or threatens to overawe, the ordinary civil authorities, and the authorities in such county, town, or city have attempted and failed to quell the same by the use of the posse comitatus, or it is apparent that such attempt would be useless, the governor, on a certificate of such facts from any [illegible]ur conservators of the peace in such county, city, or town, or from any circuit judge, chancellor, probate judge, sheriff, or justice of the supreme court, shall immediately order out such portion of the state troops or militia as he may deem necessary to enforce the laws and preserve the peace; and the governor may, when the urgency is great, order out such troops without any certificate from either of the officers mentioned in this section; but in no case shall the governor keep in service, in any county, city, or town of the state, for more than ten days, any troops or militia, other than those raised in such county, except in time of invasion or actual insurrection, unless some justice of the supreme court, or circuit judge, or chancellor of the circuit or division of which such county forms a part, or four justices of the peace in such county, or the sheriff thereof, shall certify to him that the longer presence of such militia or troops is requisite to the proper enforcement of the law, or the preservation of the peace therein.

5196 (4715). **Change of venue allowed when person aiding to suppress riot indicted.**—Any civil or military officer, or member of the state troops or militia, or any person lawfully aiding them in the performance of any duty required under the provisions of this article, indicted or sued for any injury to person or property in endeavoring to perform such duty, shall have the right, and it is hereby made the duty of the court in which such indictment or suit is pending, upon the application of any person so indicted or sued, to remove the trial of the indictment or suit to some county free from exception, other than that in which the indictment was found or injury done.

5197 (4716). **Military officer may require written instructions; discretion as to manner of executing orders.**—Any officer, whose command is called out under the provisions of this article, and reporting to any civil magistrate, may require such magistrate to make such order in writing, and prescribe therein the outline of the duties required of him and his command, and may decline to obey such orders until put in writing; and while such commanding officer must obey all lawful commands of such magistrate, such military officer may use his discretion as to the manner of carrying out such orders, so long as he complies with their spirit.

CHAPTER 177.

PERJURY. 5198–5203.

5198 (3906) (4112, 4114) (3557, 3559) (17, 19). **Perjury and subornation of perjury on trial for felony.**—Any person, who willfully and corruptly swears or affirms falsely, or corruptly procures another to so swear or affirm, in regard to any material matter or thing, on the trial of any person under an indictment for felony, must, on conviction, be imprisoned in the penitentiary for not less than three, nor more than twenty years. (Form 67.)

See note to section 5200.

5199 (3908) (4813) (4139) (589). **Indictment for perjury or subornation.**—In an indictment for perjury, or subornation of perjury, it is not necessary to set forth the pleadings, record, or proceedings, with which the false oath is connected, or the commission or authority of the court or person before whom the perjury was committed; it is sufficient to state the substance of the proceedings, the name of the court or officer before whom the oath was taken, and that such court or officer had authority to administer it, with the necessary allegations of the falsity of the matter on which the perjury is assigned. (Forms 67, 68.)

Statute dispenses with many requirements of common-law indictments, but substance of proceedings must be set forth; and other averments necessary.—Jacobs's case, 61 Ala. 448. Forms in Code, and analogous forms sufficient; sufficient allegation of false testimony, or assignments of perjury; proof of one assignment sufficient.—Williams's case, 68 Ala. 551; Brown's case,

47 Ala. 47; Peterson's case, 74 Ala. 34; DeBernie's case, 19 Ala. 23; McMurry's case, 6 Ala. 324; Lea's case, 3 Ala. 602; Smith's case, 103 Ala. 57; McClerkin's case, 105 Ala. 107; Walker's case, 96 Ala. 53; Barnett's case, 89 Ala. 165; Hicks's case, 86 Ala. 30; Davis's case, 79 Ala. 20. Indictment charging perjury on trial of a person charged with burglary, must allege name of owner of house burglarized.—Davis's case, 89 Ala. 20. Indictment for perjury before grand jury must state name of party and act under investigation.—Banks's case, 78 Ala. 14.

5200 (3907) (4113, 4114) (3558, 3559) (18, 19). **Perjury and subornation in other cases.**—Any person, who willfully and corruptly swears or affirms falsely, or corruptly procures another to so swear or affirm, in regard to any material matter or thing, upon any oath or affirmation authorized by law, except on the trial of any person under an indictment for a felony, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than five years. (Form 68.)

A definition of perjury given in Hood's case, 44 Ala. 81. Oath must be willfully and corruptly false.—Ib.; Green's case, 41 Ala. 419. Effect of taking oath pursuant to advice of counsel.—Hood's case, 44 Ala. 81; Barnett's case, 89 Ala. 165. False oath or affidavit to superfluous or immaterial matter not perjury.—Gibson's case, 44 Ala. 17; Hood's case, Ib. 81; McMurry's case, 6 Ala. 324; Bank's case, 78 Ala. 14. Need not be immediately material; sufficient if it adds weight to, and has direct connection with facts that are material.—Williams's case, 68 Ala. 551; Jacobs's case, 61 Ala. 448. False oath to affidavit in detinue is perjury.—Jacobs's case, 61 Ala. 448. In affidavit for attachment.—Hood's case, 44 Ala. 81. On application for habeas corpus.—Gibson's case, 44 Ala. 17. Evidence of officer's authority to administer oath. Moore's case, 52 Ala. 424. Proceedings wherein the perjury was committed; what material variance.—Brown's case, 47 Ala. 47; Jacobs's case, 61 Ala. 448. Proof of substance of matter falsely sworn to, sufficient.—Taylor's case, 48 Ala. 157. Also of assignment of perjury.—Williams's case, 68 Ala. 551. Materiality of matter sworn to must appear.—Ib.; Floyd's case, 30 Ala. 511. Falsity of statement proved by two witnesses, or one witness and strong corroborating circumstances.—Williams's case, 68 Ala. 551; Peterson's case, 74 Ala. 34. Necessity and admissibility in evidence of original papers, record, indictment, etc.—McMurry's case, 6 Ala. 324; Williams's case, 68 Ala. 551. When there are several assignments of perjury, proof of any one will support conviction. Smith's case, 103 Ala. 57. Perjury may be predicated on oath administered by commissioner to take depositions who was appointed by a de facto deputy-register.—Merlette's case, 100 Ala. 42. Perjury cannot be founded on oath administered by a de facto deputy-clerk.—Walker's case, 107 Ala. 5. If the oath be administered by the de facto deputy in the presence and with the consent of the duly authorized officer, it is the act of the officer himself.—Ib. Indictment charging perjury in falsely making affidavit for new trial in case of "G. vs. D." is not supported by proof that it was in case of "G. et al. vs. D."—Walker's case, 96 Ala. 53. Indictment alleging false swearing, "being duly sworn by the clerk of said county," is not supported by proof that it was by clerk of city court —McClerkin's case, 105 Ala. 107. A defendant charged with perjury in falsely swearing that his signature to a document was falsely obtained, cannot defend by proving that he made no such signature.—Barnett's case, 89 Ala. 165. Perjury cannot be predicated on void judicial proceeding, or on void affidavit. Collins's case, 78 Ala. 433. Perjury may be predicated on preliminary proceedings before justice of peace which are founded on coroner's inquest.—Boynton's case, 77 Ala. 29.

5201 (3909) (4287, 4288). **Perjury of electors.**—Any person, who willfully, corruptly and falsely takes the registration oath required by law of electors, or willfully, corruptly and falsely takes any oath required by law at any election, general or special, or state, county, or municipal, is guilty of perjury, and must, on conviction, be imprisoned in the penitentiary not less than two, nor more than five years.*

Moore's case, 52 Ala. 424.

*Section 3910 of the Code of 1886 was stricken out by joint committee.

5202 (3911). **False oath by taxpayer.**—Any person, who, having taken the oath required by law to be administered to him by the tax-assessor or his deputy, before proceeding to list property and other subjects for taxation, willfully and corruptly answers falsely any lawful question which such assessor or his deputy may put to him touching the return of property and other subjects of taxation, or willfully and corruptly makes a false return of the property and other subjects of taxation required by law to be by him returned for taxation, is guilty of perjury, and must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than five years.

5203 (3912). **Perjury by officer of state troops in making false oath claiming allowance.**—Any commanding officer of any military company forming a part of the Alabama state troops, who willfully and corruptly makes any false oath touching any matter required by law to be contained in any statement made by him for the purpose of obtaining for such company any allowance provided by law, is guilty of perjury, and, on conviction, must be imprisoned in the penitentiary for not less than two, nor more than five years.

CHAPTER 178.

PRELIMINARY PROCEEDINGS.

ARTICLE 1.—COMPLAINT, DEPOSITIONS AND WARRANT OF ARREST. 5204–5208.
2.—BY WHOM, HOW AND WHEN ARRESTS MAY BE MADE. 5209–5223.
3.—DISCHARGE ON BAIL BEFORE OR WITHOUT PRELIMINARY EXAMINATION. 5224–5227.
4.—PRELIMINARY EXAMINATION AND ITS INCIDENTS. 5228–5247.

ARTICLE 1.

COMPLAINT, DEPOSITIONS AND WARRANT OF ARREST.

5204 (4255) (4647) (3977) (428). **Definition of complaint.**—The complaint is an allegation, made before a proper magistrate, that a person has been guilty of a designated public offense.

This and three succeeding sections apply only to preliminary proceedings before committing magistrates, and not to criminal prosecutions before the county court, and justices of the peace.—Sale's case, 68 Ala. 530. Technical accuracy not required in preliminary proceedings; what sufficient.—Brown's case, 63 Ala. 97; Rhodes v. King, 52 Ala. 272. Jurisdiction of justices and notaries ex officio justices extends to the entire county in preliminary proceedings.—Matthews's case, 96 Ala. 62; Ex parte Davis, 95 Ala. 9; Boynton's case, 77 Ala. 29.

5205 (4256) (4648) (3978) (429). **Plaintiff examined on oath; depositions reduced to writing, and subscribed.**—Upon a complaint being made to any one of the magistrates specified in section

5161 (4680) that such offense has, in the opinion of the complainant, been committed, the magistrate must examine the complainant and such witnesses as he may propose, on oath, take their depositions in writing, and cause them to be subscribed by the persons making them.

Duty of magistrate discussed.—Marks v. Hastings, 101 Ala. 165. The policy of the law forbids justices from advising, as attorney, in prosecutions instituted before them.—Ib.

5206 (4257) (4649) (3979) (430). **What depositions must state.** The depositions must set forth the facts stated by the complainant and his witnesses, tending to establish the commission of the offense and the guilt of the defendant.

Duty of committing magistrate under this section.—Harris's case, 73 Ala. 495. Statutes authorizing the taking of testimony by depositions in criminal cases have no application to preliminary examinations.—Couch's case, 63 Ala. 163. See Marks v. Hastings, 101 Ala. 165.

5207 (4258) (4650) (3980) (431). **Warrant of arrest to issue, if probable cause shown.**—If the magistrate is reasonably satisfied from such depositions that the offense complained of has been committed, and there is reasonable ground to believe that the defendant is guilty thereof, he must issue a warrant of arrest.

5208 (4259) (4651, 4652) (3981, 3982) (432, 433). **Form and contents of warrant; to whom directed and by whom executed.**—A warrant of arrest is an order in writing, issued and signed by a magistrate, stating the substance of the complaint, directed to a proper officer, and commanding him to arrest the defendant; and such warrant must designate the name of the defendant, if known, but if it state that the name is unknown to the magistrate, then no name need be inserted. It must also state the offense, either by name, or so that it can be clearly inferred; the county in which it was issued must appear from some part of the warrant; and the warrant must be signed by the magistrate, with his name and initials of office, or the same must in some way appear from the warrant. It must be directed "To any lawful officer of the state," but if executed by any lawful officer, having authority to execute it, it is valid, without regard to its direction. It may be, in substance, as follows:

"The State of Alabama, } To any lawful officer of the state:
——— county. }

Complaint on oath having been made before me that the offense of (designating or describing it) has been committed, and accusing C. D. thereof, you are, therefore, commanded forthwith to arrest C. D. and bring him before me.

Dated the —— day of ———, 18—.

(Signed) E. F., Justice of the Peace
(or other magistrate, as the case may be)."

Technical accuracy not required; sufficient to designate offense, either in complaint or warrant, by name only, or by words from which it may be inferred.—Brown's case, 63 Ala. 97; Rhodes v. King, 52 Ala. 272; Crosby v. Hawthorn, 25 Ala. 221. Mere clerical misprision (omitting the word "me") does not affect sufficiency of warrant.—Johnson's case, 73 Ala. 21. Definition and sufficiency of warrant.—Brown's case, 109 Ala. 70, 86. Warrant directed to "any lawful officer of the state" is valid.—Wilson's case, 99 Ala.

194. Warrant can only issue on probable cause supported by oath or affirmation; warrant to answer "a charge of suspicion," etc., based on affidavit charging suspicion only, is void.—Johnson's case, 82 Ala. 29.

ARTICLE 2.

BY WHOM, HOW AND WHEN ARRESTS MAY BE MADE.

5209 (4260) (4653) (3983) (434). **What officers may make arrests.**—An arrest may be made, under a warrant, or without a warrant, by any sheriff, or other officer acting as sheriff, or his deputy, or by any constable, acting within their respective counties, or by any marshal, deputy-marshal, or policeman of any incorporated city or town, within the limits of the county.

Policeman may arrest anywhere in the county.—Williams's case, 44 Ala. 41. Power of marshal and constables to arrest without a warrant, and to imprison after arrest.—Hayes v. Mitchell, 69 Ala. 452. Right to resist illegal arrest; murder to kill one accused of misdemeanor, to prevent flight; rule different in felony.—Williams's case, supra. Common-law rule that arrest could not be had without warrant changed by statute.—Cunningham v. Baker, 104 Ala. 160. Policeman may arrest, with or without warrant, within county, wherever a sheriff of same county may.—Ib.; Martin's case, 89 Ala. 115. Policeman may pursue party in county who flees and arrest by force if necessary.—Floyd's case, 82 Ala. 16. Authority of arresting officers to use such force; when question for jury, whether more force used than necessary.—Patterson's case, 91 Ala. 58.

5210 (4261) (4654) (3984) (435). **Arrest by officer under warrant; when and how made.**—An officer may execute a warrant of arrest on any day and at any time; he must, in doing so, inform the defendant of his authority, and, if required, must show the warrant; and if he is refused admittance, after notice of his authority and purpose, he may break an outer or inner door or window of a dwelling-house, in order to make the arrest.

Warrant void on its face will not protect officer executing it.—Noles's case, 24 Ala. 672; Sassnett v. Weathers, 21 Ala. 673; Crumpton v. Newman, 12 Ala. 199; Duckworth v. Johnston, 7 Ala. 578. Warrant issued by notary as ex officio justice of the peace, after his term of office has expired, invalid, and does not authorize arrest by officer, unless shown that notary was officer de facto. Cary's case, 76 Ala. 78. What constitutes officer de facto.—Ib.; Heath's case, 36 Ala. 273. Sufficiency of warrant to justify arrest.—Brown's case, 109 Ala. 70. Officer is justified in executing process, unless its invalidity appears upon its face.—Ib. A de facto officer may make arrests.—Floyd's case, 79 Ala. 39. A special deputy may make arrests.—Andrew's case, 78 Ala. 483. A defendant who is arrested under a warrant and carried before a magistrate and escapes, may be rearrested under same process.—Floyd's case, 79 Ala. 39. It is the duty of an officer making arrests under process to inform defendant of his authority and explain it to party to be arrested.—King's case, 89 Ala. 43; Brown's case, 109 Ala. 70. Right to search party arrested and take from him dangerous weapons and money or other things that may be used as evidence against him.—Ex parte Hurn, 92 Ala. 112. Right to search prisoner is only incident to lawful arrest.—Cunningham v. Baker, 104 Ala. 160.

5211 (4262) (4664) (3994) (445). **Arrest by officer without warrant; when and for what allowed.**—An officer may also arrest any person, without warrant, on any day and at any time, for any public offense committed, or a breach of the peace threatened in his presence; or when a felony has been committed, though not in his presence, by the person arrested, or when a felony has been committed, and he has reasonable cause to believe that the person

arrested committed it; or when he has reasonable cause to believe that the person arrested has committed a felony, although it may afterwards appear that a felony had not in fact been committed; or on a charge made, upon reasonable cause, that the person arrested has committed a felony.

Arrests without warrant not forbidden by constitution; it is the issue of warrant without oath or affirmation which is prohibited.—Williams's case, 44 Ala. 41; Floyd's case, 82 Ala. 23; Ex parte Thomas, 100 Ala. 101. An officer to justify arrest without a warrant must be in possession of information reasonably presumed to be true, which would authorize magistrate to issue warrant. Cunningham v. Baker, 104 Ala. 160. Telegram from city's chief of police not sufficient to justify arrest without warrant.—Ib. Arrest is complete when party submits himself to power of arresting officer, and may be effected without touching him.—Dougherty's case, 106 Ala. 63. Officers may arrest without warrant to preserve peace and order, or to prevent a threatened violation of the law in their presence.—Jones's case, 100 Ala. 88; Martin's case, 89 Ala. 115. Policeman may arrest at any time or place a party whom he knows to be charged with a felony.—Floyd's case, 82 Ala. 16. May arrest without warrant person who has committed felony, though not in officer's presence.—Jones's case, 100 Ala. 88; Ex parte Thomas, 100 Ala. 101. Whether an officer can arrest party whom he suspects to be a felon from another state not decided, but discussed.—Cunningham v. Baker, 104 Ala. 160; Watson's case, 83 Ala. 60.

5212 (4263) (4665) (3995) (446). **Duty and authority of officer in making arrest without warrant.**—When arresting a person without a warrant, the officer must inform him of his authority and the cause of arrest, except when he is arrested in the actual commission of a public offense, or on pursuit; and has authority to break open an outer or inner door or window of a dwelling-house, if, after notice of his office and purpose, he is refused admittance.

King's case, 89 Ala. 43; Brown's case, 109 Ala. 70.

5213 (4264) (4666) (3996) (447). **Private person must assist officer.**—It is the duty of every person, when required to do so by an officer, to assist him in making an arrest.

It is no excuse that citizen thought his assistance futile or dangerous—he must obey; the command of the officer is warrant and, of necessity, protects citizen.—Watson's case, 83 Ala. 60; Dougherty's case, 106 Ala. 63. Policeman may summon citizens to aid in arrest without a warrant.—Martin's case, 89 Ala. 115.

5214 (4265) (4667) (3997) (448). **Arrest on order of magistrate without warrant; when made.**—When a public offense is committed in the presence of a magistrate, he may, by verbal or written order, command any person to arrest the offender; and, when arrested, may thereupon proceed as if such offender had been brought before him on a warrant of arrest.

5215 (4266) (4668, 4670) (3998, 4000) (449, 451). **When private person may arrest.**—A private person may arrest another for any public offense committed in his presence; or where a felony has been committed, though not in his presence, by the person arrested; or where a felony has been committed, and he has reasonable cause to believe that the person arrested committed it; and an arrest for felony may be made by a private person on any day and at any time.

Private person acts by permission, not by command of the law.—Morrell v. Quarles, 35 Ala. 544; Cary's case, 76 Ala. 78.

5216 (4267) (4669) (3999) (450). **His duty and authority in such case.**—He must, at the time of the arrest, inform the person to be arrested of the cause thereof, except when such person is in the actual commission of an offense, or arrested on pursuit; and if he is refused admittance, after notice of his intention, and the person to be arrested has committed a felony, he may break open an outer or inner door or window of a dwelling-house.

5217 (4268) (4671) (4001) (452). **Must take person arrested before magistrate.**—It is the duty of any private person, having arrested another for the commission of any public offense, to take him without unnecessary delay before a magistrate, or to deliver him to some one of the officers specified in section 5209 (4260), who must forthwith take him before a magistrate.

Cary's case, 76 Ala. 78.

5218 (4269) (4672) (4002) (453). **Rearrest after escape or rescue.** If a person arrested escapes or is rescued, he may be immediately pursued by the officer or person in whose custody he was, and retaken at any time, and in any place in the state; and if such officer or person is refused admittance, after notice of his intention, he may break open an outer or inner door or window of a dwelling-house, in order to retake the person so escaping or rescued.

Floyd's case, 79 Ala. 39.

5219 (4270) (4655) (3985) (436). **Warrant executed, where; when written indorsement required.**—A warrant of arrest, when issued by a judge of the supreme or circuit court, or by a chancellor, may be executed in any county in the state; but if issued by any other magistrate, it must be executed in the county in which it was issued, unless the defendant is in another county; and when the defendant is in another county, it may be executed therein, on a written indorsement on the warrant by a magistrate of that county, signed by him to the following effect: "This warrant may be executed in —— county."

Justice of the peace no authority to issue warrant for arrest of person to answer charge in another county.—Woodall v. McMillan, 38 Ala. 622.

5220 (4271) (4656) (3986) (437). **Authority of officer to pursue and arrest in another county.**—Any lawful officer, having a warrant of arrest to execute, may pursue the defendant into another county, and, on obtaining an indorsement on the warrant by a magistrate of that county, signed by such magistrate, to the following effect, "A. B. is authorized to execute this warrant in —— county," may summon persons to assist him in making the arrest, and exercise the same authority as in his own county.

Statute construed; does not mean that execution of warrant must be begun in the county of the arresting officer, while accused is there, and followed up in the event of his fleeing to another county.—Coleman's case, 63 Ala. 93.

5221 (4272) (4657) (3987) (438). **Indorsement on warrant by magistrate.**—The indorsement of the magistrate, according to the provisions of the last two sections, must not be made unless he is satisfied from his own knowledge, or from the oral or written state-

ment, on oath, of some credible persons, proving the handwriting of the magistrate issuing the warrant, in the one case, and in the other, that the person in pursuit is an officer authorized to make the arrest in the county in which the warrant issued.

5222 (4273) (4658) (3988) (439). **Magistrate not liable on indorsement.**—No magistrate, having complied with the provisions of the last section, is liable to any indictment or action for making such indorsement, although it may afterwards appear that such warrant was illegally issued, or that the person was not authorized to execute the same.

5223 (4274) (4663) (3993) (444). **When defendant must be carried before magistrate issuing warrant.**—When the warrant of arrest is executed in any other county than the one in which it is issued, and is for felony, or when for a misdemeanor, and the defendant is not bailed according to the provisions of sections 5224 (4275), 5225 (4276), he must be brought before the magistrate issuing the warrant, or if such magistrate is unable to attend, or his office vacant, before some other magistrate of the county in which such warrant issued; and the warrant, with a proper return thereon, must be delivered to such magistrate.

Ex parte Davis, 95 Ala. 9.

ARTICLE 3.

DISCHARGE ON BAIL BEFORE OR WITHOUT PRELIMINARY EXAMINATION.

5224 (4275) (4659) (3989) (440). **When officer arresting may discharge on bail.**—When the offense described in the warrant is a misdemeanor, and it is executed by the sheriff or his deputy, such sheriff or deputy may, on the request of the defendant, discharge him, on sufficient bail for his appearance at the next term of the court having jurisdiction of the offense, to answer any indictment which may be found against him therefor; and, if such court is in session, for his appearance at such court.

Sheriff or deputy not required to certify recognizance; being found on file connects it with the return on the capias.—Shreeve's case, 11 Ala. 679. If justice issuing warrant has no jurisdiction to try the case, sheriff may take bail for defendant to appear at next term of court having jurisdiction, or at the present term, if court in session; but if conditioned to appear before the justice, it is void.—Jones's case, 63 Ala. 161. Prisoner charged with misdemeanor is entitled to bail as matter of right, and it is sheriff's ministerial and absolute duty to accept sufficient bail when tendered and discharge prisoner.—Hammond's case, 59 Ala. 168; Taylor v. Smith, 104 Ala. 543.

5225 (4276) (4660) (3990) (441). **Discharge on bail by magistrate.**—When the offense described in the warrant is a misdemeanor, and it is not executed by the sheriff or his deputy, at the defendant's request, he may be brought before a magistrate of the county in which the warrant was executed; and such magistrate may, without examination, discharge such defendant, upon sufficient bail for his appearance before the court having cognizance of the offense.

5226 (4277) (4661) (3991) (442). **Same; presumption in fixing amount of bail.**—When the bail is taken under the provisions of the last two sections, the officer or magistrate, in fixing the amount of bail, must act on the presumption that the offense is of an aggravated nature.

5227 (4278) (4662) (3992) (443). **Undertaking and warrant returned to court.**—The magistrate admitting the defendant to bail, under the provisions of section 5225 (4276), must certify the same upon the warrant, and deliver such warrant, with the undertaking, to the officer who executed the warrant; who must cause the same to be delivered, without unnecessary delay, to the clerk of the court in which the defendant is bound by his undertaking to appear.

ARTICLE 4.

PRELIMINARY EXAMINATION AND ITS INCIDENTS.

5228 (4279) (4663) (4023) (474). **Magistrate may associate others with him.**—Any magistrate to whom complaint is made, or before whom any defendant is brought charged with a public offense, may associate with himself one or more magistrates of equal grade; and the powers and duties in this chapter prescribed may be executed and performed by them.

In preliminary proceedings justices and notaries ex officio justices have jurisdiction coextensive with the county, and may sit out of their beats.—Ex parte Davis, 95 Ala. 9; Boyton's case, 77 Ala. 29; Matthews's case, 96 Ala. 62.

5229 (4280) (4673) (4003) (454). **Adjournment of examination; defendant bailed or committed ad interim, etc.**—When a defendant is brought before a magistrate, under a warrant of arrest, for examination, such magistrate may adjourn the examination from time to time, as may be necessary, not exceeding ten days at one time, without the consent of the defendant, and to the same, or a different place in the county; and, in such case, if the defendant is charged with a capital offense, he must be committed to jail in the meantime; but if the offense is not capital, he may give bail, in such sum as the magistrate directs, for his appearance for such further examination, and for the want thereof must be committed; and on the day to which the examination was adjourned, he may be brought before the magistrate by his verbal order to the officer who had charge of him, or by order in writing to a different person, if the custody has been changed.

When recognizance void for uncertainty.—Allen's case, 33 Ala. 422.

5230 (4281) (4674) (4004) (455). **Default of defendant admitted to bail certified to court; proceedings thereon.**—If the defendant does not appear before the magistrate at the time to which the examination is adjourned, he must certify the default on the undertaking of bail, and return the same to the next circuit or city court of his county; and the like proceedings must be had thereon as up-

on the breach of an undertaking in that court, the certificate of the magistrate being presumptive evidence of the default of the defendant.

5231 (4282) (4675) (4005) (456). **On failure of magistrate to attend, another may act in his stead.**—If the magistrate adjourning the examination fails to attend on the day to which such examination is adjourned, any other magistrate of the county may attend in his place and proceed with the examination, or, if the defendant fails to appear, enter his default, and certify the same, with the undertaking of bail, to the next circuit or city court of the county, according to the provisions of the preceding sections; and the like proceedings may be had thereon as if certified by the magistrate taking the same.

Ex parte Davis, 95 Ala. 9; Matthews's case, 96 Ala. 62.

5232 (4283) (4676) (4006) (457). **Alias warrant of arrest.**—On the failure of the defendant to appear, the magistrate certifying the default, or any other magistrate, may issue another warrant of arrest, upon which the same proceedings may be had against the defendant as on the original warrant.

5233 (4284) (4677) (4007) (458). **Examination; how conducted.** The magistrate before whom any person is brought, charged with a public offense, must, as soon as may be, examine the complainant and the witnesses for the prosecution, on oath, in the presence of the defendant; and after the testimony for the prosecution is heard, the witnesses for the defendant must be sworn and examined.

5234 (4285) (4678, 4679) (4008, 4009) (459, 460). **Right of defendant to appear by counsel; examination, how conducted.**—The defendant may appear by counsel, and the magistrate may, on application, direct the witnesses for the prosecution or defense, or both, to be kept separate, so that they cannot hear the evidence, or converse with each other until examined; such examination is under the control of the magistrate, and should be so conducted as to elicit the facts of the case.

5235 (4286) (4679) (4009) (460). **Testimony of witnesses reduced to writing and subscribed.**—The evidence of the witnesses examined must be reduced to writing by the magistrate, or under his direction, and signed by the witnesses respectively.

Matthews's case, 96 Ala. 62.

5236 (4287) (4680) (4010) (461). **When defendant must be discharged.**—Upon the whole evidence, if it appears to the magistrate that no offense has been committed, or that there is no probable cause for charging the defendant therewith, he must be discharged.

Discharge on preliminary examination does not bar subsequent arrest and examination.—Ex parte Crawlin, 92 Ala. 101; Nicholson's case, 72 Ala. 176; Robinson's case, 108 Ala. 161.

5237 (4288) (4681) (4011) (462). **If probable cause shown, discharged on bail, or committed.**—If it appears that an offense has been committed, and there is probable cause to believe that the defendant is guilty thereof, he must be discharged, if the offense is

bailable, upon giving sufficient bail; but if sufficient bail is not given, or if the offense is not bailable, he must be committed to jail by an order in writing.

The accused having had preliminary examination and bail fixed, is no bar to further arrest or examination, nor is he thereby entitled to bail after indictment.—Robinson's case, 108 Ala. 161, overruling Skelton's case, 104 Ala. 98. As to what constitutes probable cause, see Lunsford v. Dietrich, 93 Ala. 565; Jordan v. A. G. S. R. Co., 81 Ala. 220.

5238 (4289) (4682) (4012) (463). **Form of commitment after preliminary examination.**—The commitment may be, in substance, as follows:

"The State of Alabama, ——— county. } To the jailer of ——— county:

On the examination of A. B., charged with the offense of murder (or other offense, as the case may be, describing it by name, or so that it may be clearly inferred), it appearing that such offense has been committed, and that there is sufficient cause to believe that A. B. is guilty thereof, you are, therefore, commanded to receive him into your custody, and detain him until he is legally discharged.

Dated this —— day of ———, 18—.

C. D., Justice of the Peace
(or other officer, as the case may be)."

5239 (4290) (4683) (4013) (464). **The defendant, if committed, may elect to perform hard labor for county; duties of officers.** If the defendant is charged with a misdemeanor, and is ordered to be committed to the county jail, he may elect to perform hard labor for the county pending his trial. It shall be the duty of the magistrate committing him to inform him of his right to make such election, and of the advantages accruing to him thereby; and if he so elect, it shall be the duty of the magistrate to make an order allowing him to do so, and to certify that fact to the court at which he is required to appear. It shall be the duty of the sheriff to carry every person in his custody charged with a misdemeanor before the judge of probate, or, if he is absent, before the clerk of the circuit court, within twelve hours after receiving such person in custody; and it shall be the duty of such judge or clerk to inform such prisoner of his right to make such election, and of the advantage accruing to him thereby; and if he shall elect to perform such hard labor, such judge or clerk shall make an order allowing him to do so, and shall certify that fact to the court at which he is required to appear; and if he is convicted when tried, it shall be the duty of the court, in determining his punishment, to take into consideration the amount of labor performed by him. It shall be the duty of each justice of the peace and notary public to render to the grand jury of the county, on the first day of each term of the circuit or city court, a statement, in writing and under oath, of the name of each defendant charged with a misdemeanor committed by him, the date of such commitment, and whether or not he gave such defendant the information required by this section. It shall be the duty of the sheriff to render to the grand jury of his county, on the first day of each term of

the circuit court, a statement, in writing and under oath, setting forth the name of every person charged with a misdemeanor coming into his custody since his last preceding statement, when he received such defendant, and when he carried him before the judge of probate, or clerk of the circuit court, as provided by this section. It shall be the duty of the judge of probate and clerk of the circuit court to render to the grand jury of the county, on the first day of each term of the circuit court, a statement, in writing and under oath, of the name of each defendant brought before them by the sheriff under this section, of the date when he was so brought before them, and whether or not they gave him the information required by this section.

Giles's case, 52 Ala. 29; Avery's case, Ib. 340.

5240 (4291) (4684) (4014) (465). **Bail taken by sheriff on commitment for bailable offense.**—Whenever a person is committed to jail for a bailable offense, under the provisions of this chapter, the magistrate must indorse on the commitment the amount of bail required, and sign his name thereto; and the sheriff of the county to which he is committed may discharge him on giving sufficient bail in the amount so indorsed; and must, in such case, return the undertaking to the court to which such person is bound to appear, within five days thereafter. Any justice of the peace who fails to fix the amount of bail and to indorse the same on the mittimus, as required by this section, must, on conviction, be fined not more than fifty dollars.

Antonez's case, 26 Ala. 81; Evans's case, 63 Ala. 195.

5241 (4292) (4685) (4015) (466). **Witness bound over to court.** The magistrate must also require the witnesses for the prosecution to enter into an undertaking, in the sum of one hundred dollars each, to appear and testify at the court having cognizance of the offense; and, if requested by the defendant, may require his witnesses to enter into such undertaking.

Calhoun's case, 99 Ala. 279.

5242 (4293) (4686, 4687) (4016, 4017) (467, 468). **Form of undertaking of witness when bound over to court on preliminary examination.**—The undertaking of the witnesses for the prosecution or defense may be, in substance, as follows:

"The State of Alabama, ——— county. } We, A. B., C. D. and E. F., witnesses } against (or for, as the case may be) G. H., charged with a public offense, do each agree to appear at the next circuit (or city) court of —— county, to give evidence against (or for, as the case may be) him, and, failing so to do, to pay to the State of Alabama (or to the said G. H., if the undertaking is for the defendant's witnesses) one hundred dollars. Dated this —— day of ———, 18—.

(Signed) A. B.
C. D.
E. F.

Taken by L. M., Justice of the Peace (or as the case may be)."

5243 (4294) (4688) (4018) (469). **When surety for appearance required of witness.**—Whenever the magistrate has good reason to believe that a witness for the prosecution will not appear to testify, he may order such witness to enter into an undertaking to appear and testify in a larger sum, and with sufficient sureties; but such surety must not be required from any witness who does not reside in this state, and within fifty miles of the place where the examination takes place.

Calhoun's case, 99 Ala. 279.

5244 (4295) (4689) (4019) (470). **When surety required of minors and married women.**—Married women and minors, when material witnesses for the prosecution, may also be required, in the discretion of the magistrate, to procure sureties, who will undertake for their appearance to testify.

5245 (4296) (4690) (4020) (471). **Commitment of witness on default of undertaking.**—Any witness required to enter into an undertaking, with or without surety, must, on failure or refusal, be committed to jail.

5246 (4297) (4691) (4021) (472). **Discharge by sheriff.**—In such case, the magistrate must state in the commitment the amount of the undertaking, and whether surety is required; and the witness must be discharged by the sheriff, on entering into the undertaking as required.

5247 (4298) (4692) (4022) (473). **Magistrate must report to solicitor or grand jury on the second day of each term of circuit or city court; penalty for failure.**—When any person is held by a justice of the peace, or other magistrate, to answer an indictment for a public offense, it is the duty of such justice of the peace, or other magistrate, to return to the solicitor or the foreman of the grand jury, on the second day of the term of the court to which such person is held to answer, the affidavit and warrant of arrest, with a transcript of the docket and a list of the state's witnesses and all undertakings of bail by parties or witnesses in the case; and any justice of the peace, or other committing magistrate, failing to do so may be compelled by rule of court, and, in case of disobedience, by attachment, and is also guilty of a misdemeanor. When there has been no such committal since the last term of the circuit or city court, the justice of the peace, or other magistrate, must, at the time herein specified, report that fact in writing to the grand jury of such court. Feb. 28, 1889, p. 68.

Matthews's case, 96 Ala. 62.

CHAPTER 179.

PRIZE-FIGHTING. 5248–5250.

5248 (3770) (4313). **Prize-fighting.**—Any person, who shall voluntarily engage in a pugilistic encounter between man and man, or

a fight between a man and a bull, or any other animal, for money or other thing of value, or for any championship, or upon the result of which any money or other thing of value is bet or wagered, or to see which any admission fee is charged, either directly or indirectly, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than five years.

5249. "Pugilistic encounter" and "man" defined.—By the term "pugilistic encounter" as employed in the preceding section is meant any voluntary fight or personal encounter by blows by means of the fist, or otherwise, whether with or without gloves, between two persons, for money, or for a prize of any character, or for any thing of value, or for any championship, or upon the result of which any money or other thing of value is bet or wagered; and by the term "man" is meant any human being.

5250. Duty of sheriff to suppress and prevent prize-fights.—It is the duty of the sheriff to suppress and prevent the commission of any offense under this chapter, and to that end he may employ all the power and authority vested in him by law as a conservator of the peace.

CHAPTER 180.

PROCEEDINGS AFTER INDICTMENT; TRIAL AND ITS INCIDENTS.

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ARTICLE 1.

ARREST WITHOUT WRIT.

5251 (4395) (4825) (4152). **Defendant, if present, arrested without process.**—After an indictment has been returned by the

grand jury, the court may order any defendant who is present, and who has not been arrested, to be taken into custody without process; and when the defendant has given bail prior to the return of an indictment against him for a capital offense, the court may, in its discretion, likewise order him into custody.

Ex parte Robinson, 108 Ala. 161.

ARTICLE 2.

ISSUE AND EXECUTION OF WRIT.

5252 (4396) (4826) (4153) (601). **Writ of arrest issued by the clerk, solicitor, or judge.**—A writ of arrest must be issued by the clerk forthwith after the finding of the indictment against each defendant who is not in actual custody, or who has not been bailed, or whose undertaking of bail has been declared forfeited; or it may be issued without an order of court, either in term time or vacation, by the solicitor of the circuit, or by any circuit judge. But if the defendant is in actual custody, he shall be held by virtue of the indictment, and no writ of arrest need be issued.

Ex parte Robinson, 108 Ala. 161.

5253 (4397) (4827) (4154) (602). **Form of writ of arrest for felony.**—When the indictment is for a felony, the writ of arrest may be in the following form:

"State of Alabama, ——— county. } To any sheriff of the state:

An indictment having been found against A. B., at the —— term —— 18—, of the —— court of —— county, for the offense of —— (describing the offense so as to show that it is a felony), you are, therefore, commanded forthwith to arrest the said defendant and commit him to jail; and that you return this writ according to law. Dated this —— day of ———, 18—.

(Signed) C. D.,
Clerk of the Circuit Court of ——— County."

Wilson's case, 99 Ala. 194.

5254 (4398) (4828) (4155) (603). **Form of same for misdemeanor.**—When the indictment is for a misdemeanor, the writ of arrest may be in the same form, except that after the words "commit him to jail," must be added the words "unless he give bail to answer said indictment."

5255 (4399) (4839) (4168) (616). **Alias and pluries writs.**—As many writs of arrest may be issued as necessary; and after any forfeiture is taken, another writ of arrest may be issued without an order.

5256 (4400) (4829) (4156) (604). **Writ of arrest executed by sheriff, etc.**—A writ of arrest may be executed by the sheriff of any county in the state, or by his deputy; and such officers have the same powers and authority, in relation to arrest under a writ of arrest, as are by law conferred upon them in executing a warrant of arrest.

ARTICLE 3.

DISPOSITION OF PRISONER; COPY AND RETURN OF WRIT.

5257 (4401) (4833) (4162) (610). **On commitment, copy of writ delivered to jailer.**—When any defendant is committed to jail under a writ of arrest, the sheriff must retain or deliver to the jailer a copy of the writ; which copy is as good authority for the detention of the defendant as the original writ.

5258 (4402) (4834) (4163) (611). **Return of writ executed with undertaking of bail; when and how made.**—All writs of arrest, with the undertaking of bail when given, must be returned by the sheriff to the clerk of the court from which they were issued, with the proper return thereon indorsed; if the writ is executed, the return must be made within five days after service; but if executed out of the county in which the indictment was found, the return may be made by depositing the writ in the post-office, within five days after service, in a sealed envelope, directed to the clerk of the court, at the court-house of his county, with the title of the case, and the character of the process indorsed on the envelope.

5259 (4403) (4835) (4164) (612). **Return of writ not executed; when and how made.**—When any writ of arrest is not executed, it must be returned by the sheriff to the clerk of the court from which it was issued by the third day of such court, or before the case is called in order; and when the return is made by the sheriff of any other county than that in which the indictment was found, it may be made by mail, as prescribed by the preceding section.

5260 (4404) (4836) (4165) (613). **Sheriff attached and fined for failure to make return; certificate of postmaster as evidence.** Any sheriff, who fails to comply with the provisions of the last two sections, may be compelled to make the return by attachment, and also forfeits to the state, for the use of the county, fifty dollars, which may be recovered with costs against him and his sureties, or any of them, having three days' notice thereof, by motion in the court in which the indictment was found; and on the trial of such motion, the certificate of the postmaster is presumptive evidence of the deposit of the writ of arrest, the superscription, and indorsement on the envelope.

5261 (4405) (4837) (4166) (614). **Returns by mail taken from office by clerk, etc.; expense paid by county.**—The clerk of the court must take from the post-office all packages addressed to him, which are indorsed according to the provisions of section 5258 (4402), and the expense of the same must be paid by the county.

ARTICLE 4.

PLEA ON ARRAIGNMENT.

5262 (4438) (4870) (4169) (617). **When prisoner stands mute, or refuses to plead.**—If a defendant, when arraigned, refuses or neglects to plead, or stands mute, the court must cause the plea of not guilty to be entered for him.

Final arraignment; when not indispensable in felony.—Fernandez's case, 7 Ala. 511; Paris's case, 36 Ala. 232. Unnecessary for rearraignment after reversal.—Levy's case, 49 Ala. 390. The same on second trial.—Mose's case, 36 Ala. 211. Joinder by the state in issue tendered by plea of not guilty, is merely formal, and failure of record to recite an amendable defect.—Brown's case, 74 Ala. 478. Record must affirmatively show that defendant pleaded to the indictment, or that the plea of not guilty was entered for him.—Jackson's case, 91 Ala. 55.

5263 (4439) (4871) (4170) (618). **When prisoner pleads guilty.** If he pleads guilty, the court must cause the punishment to be determined by a jury, except where the punishment is by law required to be fixed by the court, and may, in all cases in which a plea of guilty is entered, cause witnesses to be examined, to ascertain the character of the offense.

ARTICLE 5.

FORMAL PLEAS.

5264 (4440) (4888) (4186) (634). **Plea in abatement must be verified.**—No plea in abatement, or other dilatory plea to an indictment, must be received, unless it is verified by oath, or unless its truth appears by some matter of record, or other written evidence accompanying it.

Subscribed, sworn to and attested by clerk, sufficient **verification** without formal affidavit.—Middleton's case, 5 Port. 484. The rule of practice as to **filing** pleas in time allowed does not apply to criminal cases.—Nixon's case, 68 Ala. 535. In time, if filed at first term at which defendant appears.—Lawrence's case, 59 Ala. 61. Several pleas of abatement allowed.—Greenwood's case, 5 Port. 474. Discretionary with court to grant or refuse withdrawal of plea of not guilty, to file plea in abatement.—Williams's case, 3 Stew. 454; Hubbard's case, 72 Ala. 164. Need not be signed by counsel; proper conclusion.—Middleton's case, 5 Port. 484. Defects in plea cured by state joining issue thereon. Ligon's case, 7 Port. 167. A substantial **misnomer** in either the Christian or surname may be pleaded in abatement.—Lynes's case, 5 Port. 236; Washington's case, 68 Ala. 85. Mere misspelling immaterial misnomer, unless it affects pronunciation.—Ib.; Underwood's case, 72 Ala. 220. What plea of misnomer must state.—Bright's case, 76 Ala. 96. Must set out defendant's true name, and deny that he is known by name in indictment; else demurrable.—Wren's case, 70 Ala. 1. Sufficiency tested by **demurrer**.—Rooks's case, 83 Ala. 79. Misnomer must be taken advantage of before arraignment and plea to merits; else too late.—Miller's case, 54 Ala. 155; Daniel's case, 60 Ala. 56; Wells's case, 88 Ala. 239. When not stricken out on motion as frivolous.—Diggs's case, 49 Ala. 311. When replication "that defendant is as well known by the name laid in the indictment as by any other," not demurrable.—Gerrish's case, 53 Ala. 476. Such replication is full answer to the plea.—Washington's case, 68 Ala. 85. Defendant's admission before mayor's court, from silence when name called, admissible to prove name.—White's case, 72 Ala. 195. Relevancy of evidence as to custom or usage.—Ib. Instances of misnomer, see note to section 4904.

5265 (4444) (4803) (4130) (580). **Judgment pleaded without averring jurisdictional facts.**—In pleading a judgment, or other judicial proceeding or determination of any court, or officer, such judgment, proceeding, or determination may be alleged to have been duly made or rendered, without stating the facts conferring jurisdiction; but the facts necessary to show jurisdiction must be proved on the trial.

Conviction in municipal court.—Powell's case, 89 Ala. 172. But one conviction for single criminal act.—Hurst's case, 86 Ala. 604; Moore's case, 71 Ala. 307; O'Bryen's case, 91 Ala. 25. Must show identity of the two charges.—Baysinger's case, 77 Ala. 60; Gordon's case, 71 Ala. 315; Gunter's case, 111 Ala. 23.

5266 (4442) (4891) (4189) (637). **How character of plea determined.**—In criminal proceedings, a plea is to be determined according to its substance, and not by its commencement or conclusion.

5267 (4443) (4629) (3933) (385). **Prosecution of misdemeanor when first commenced in county court or before justice; abatement of.**—The original jurisdiction of the circuit and city courts over felonies and misdemeanors is, in all things, unchanged, except that when a prosecution for a misdemeanor has been first commenced, and is still pending in the county court, or before a justice of the peace having final jurisdiction, the prosecution in the circuit or city court shall be abated on plea.

Moore's case, 71 Ala. 307.

5268 (4444) (4630) (3934) (386). **Requisites of plea; when jury instructed to find issue for state.**—The plea provided for in the preceding section must state that the prosecution in the county court, or before the justice, was commenced without the agency, request, participation, connivance, or authority of the defendant, and must be sworn to. Each and every averment of the plea may be traversed and denied; and if, on the trial of the issue, it appears that such prosecution was commenced by the agency, request, participation, connivance, or authority of the defendant, then the jury must be instructed, if they find either of these facts to exist, to find the issue in favor of the state; and the case must proceed to trial in the circuit or city court, as the case may be.

Moore's case, 71 Ala. 307.

5269 (4445) (4889) (4187) (635). **Objections to indictment for defect in grand jury; when not available; exception.**—No objection can be taken to an indictment, by plea in abatement, or otherwise, on the ground that any member of the grand jury was not legally qualified, or that the grand jurors were not legally drawn or summoned, or on any other ground going to the formation of the grand jury, except that the jurors were not drawn in the presence of the officers designated by law; and neither this objection nor any other can be taken to the formation of a special grand jury summoned by the direction of the court.

Objection going to formation of jury only allowed in two classes of cases: (1) When not drawn in presence of officers designated by law; (2) when there is some order of court or action of the judge appearing on record relating to the

organization of grand jury which is contrary to, or unauthorized by the statute. Billingslea's case, 68 Ala. 486; Cross's case, 63 Ala. 40; Spigener's case, 62 Ala. 383; Boulo's case, 51 Ala. 18; Preston's case, 63 Ala. 127; Oliver's case, 66 Ala. 8; Roe's case, 82 Ala. 68; Harrington's case, 83 Ala. 9; Dotson's case, 88 Ala. 208; Cochran's case, 89 Ala. 40; Tanner's case, 92 Ala. 1; Welsh's case, 96 Ala. 92; Forney's case, 98 Ala. 19; Germolgez's case, 99 Ala. 216; Sampson's case, 107 Ala. 76; Linehan's case, 113 Ala. 70. False personation of a grand juror good ground for plea to indictment.—Nixon's case, 68 Ala. 535. Replication, to plea in such case, that the person who served was in fact the person drawn, etc. Cochran's case, 89 Ala. 40. Objection to indictment on account of incompetency of grand jurors.—Oliver's case, 66 Ala. 8. That one of grand jurors was over age, is no ground for quashing or abating indictment.—Spigener's case, 62 Ala. 383. Objection to grand jury too late after pleading to merits.—Nixon's case, 68 Ala. 535; Horton's case, 47 Ala. 58; Battle's case, 54 Ala. 93. Plea in bar or abatement admits genuineness of indictment.—Wesley's case, 52 Ala. 182; Sparrenberger's case, 53 Ala. 481; Bradford's case, 54 Ala. 230. When invalidity of indictment may be shown first on appeal.—Sanders's case, 55 Ala. 183.

5270 (4446) (4890) (4188) (636). **When such plea filed; if sustained, new indictment preferred; limitation of prosecution.**—A plea to an indictment, on the ground that the grand jurors by whom it was found were not drawn in the presence of the officers designated by law, must, if accused has been arrested, be filed at the term at which the indictment is found, and if accused has not been arrested, it must be filed at the first term at which it is practicable after the defendant's arrest, and in either case before a plea to the merits; if sustained, the defendant must not be discharged, but must be held in custody, or bailed, as the case may be, to answer another indictment at the same or the next term of the court; and the time elapsing between the first and second indictments, in such case, must not be computed as a part of the period limited by law for the prosecution of the offense.

See note to preceding section.

ARTICLE 6.

SETTING CASES FOR TRIAL.

5271 (4447) (4869). **Cases set for particular days; exceptions.** It is the duty of the clerk of the circuit or city court to set for trial all criminal cases in his court, except capital cases, and cases of parties in custody, for particular days; and no case so set shall be called for trial before such day.

Clerk has no authority to set capital cases, and any attempt to do so is a nullity.—Goley's case, 87 Ala. 57. Constitutional right of "a speedy public trial" by "jury," construed.—Ex parte State, 76 Ala. 482; Noles's case, 24 Ala. 672; Tim's case, 26 Ala. 165. Extends only to prosecutions by "indictment or information."—Tim's case, supra; Connelly's case, 60 Ala. 89. Statute authorizing a waiver of trial by jury, by transferring case to inferior court, not unconstitutional.—Ib. Waiver of trial by jury; revision of judgment on facts.—Wren's case, 70 Ala. 1; Summers's case, 70 Ala. 16. Waiver of trial by jury; right questionable.—Sanders's case, 55 Ala. 43. Trial with less than twelve jurors, not permitted, even with the defendant's consent.—Bell's case, 44 Ala. 393. Impeachment law providing for trial without jury, not unconstitutional.—Buckley's case, 54 Ala. 599. Defendant entitled to disposition of his case during term then being held if possible, etc. Lee's case, 52 Ala. 321. Right of accused to be present during trial, etc.—Ex parte Bryan, 44 Ala. 402; Hughes's case, 2 Ala. 102; Slocovitch's case, 46 Ala. 227; Henry's case, 33 Ala. 389; Hall's case, 40 Ala. 698; Sylvester's case, 71

Ala. 17; Cook's case, 60 Ala. 39; Hughes's case, 2 Ala. 102; Eliza's case, 39 Ala. 694; Gibson's case, Ib. 693; Waller's case, 40 Ala. 325. What entry sufficiently shows presence of prisoner throughout the trial.—Snow's case, 58 Ala. 372. Shackling or manacling prisoner during trial, in discretion of court, but resorted to only in extreme cases.—Faire's case, 58 Ala. 74. When put upon trial, sheriff has custody of prisoner, by operation of law, without an order. Hodges's case, 8 Ala. 55. But see Hawk's case, 84 Ala. 466; Cook's case, 91 Ala. 53.

ARTICLE 7.

APPOINTING COUNSEL TO DEFEND, AND SERVING COPY OF VENIRE AND INDICTMENT.

5272 (4448) (4872) (4171) (619). **When counsel appointed for defendant in capital case.**—If the defendant is indicted for a capital offense, and is unable to employ counsel, the court must appoint counsel for him, not exceeding two, who must be allowed access to him, if confined, at all reasonable hours.

5273 (4449) (4872) (4171) (619). **Service of copy of indictment and list of jurors on defendant in capital case.**—If the defendant is indicted for a capital offense, a copy of the indictment and a copy of the venire for his trial must be served on him, or on counsel appearing for him, at least one entire day before the day set for his trial.

Rulings on former statute (prior to Code of 1886) not strictly applicable to this.—Reese's case, 90 Ala. 624. Whether the defendant is in custody or on bail, the service may now be made **on defendant personally or on counsel** appearing for him.—Reese's case, 90 Ala. 624; Johnson's case, 94 Ala. 35; Henderson's case, 98 Ala. 35. **Not essential to validity that service** of copy of indictment and venire **be made at the same time.**—Barnett's case, 83 Ala. 40. Irregularities waived unless **objection** made before entering upon trial.—Williams's case, 81 Ala. 1; Barnett's case, 83 Ala. 40; Wade's case, 50 Ala. 164. Effect of **duplicating name** of juror, thereby making the whole number one less than ordered.—McQueen's case, 94 Ala. 50; Darby's case, 92 Ala. 9. **Copy of a copy** sufficient on change of venue.—Brister's case, 26 Ala. 107. **Validity of service** not affected by prior nolle prosequi of one count.—Scott's case, 37 Ala. 117. **Sufficiency of copy.**—Ezell's case, 54 Ala. 165; Nutt's case, 63 Ala. 180; Hubbard's case, 72 Ala. 164; McDaniel's case, 76 Ala. 1. **Effect of material variance** between copy and original; when ground to postpone trial. Tidwell's case, 70 Ala. 33. **Acknowledgment** in open court, **of service**, precludes dispute of service or further inquiry.—Wesley's case, 52 Ala. 182; Griffin's case, 90 Ala. 596. No objection to venire if **prisoner not misled.**—Aiken's case, 35 Ala. 399. Court may determine **spelling** of name of juror as written in list.—Taylor's case, 48 Ala. 180. **Mistake in name** of juror immaterial. Gibson's case, 89 Ala. 121; Walker's case, 91 Ala. 76. Making and serving list **ministerial** duties.—Kenan's case, 73 Ala. 15. **Record** must show order requiring sheriff to serve copy of indictment and venire, but **need not affirmatively show compliance** with such order; in absence of objection in court below, compliance **presumed on appeal.**—Spicer's case, 69 Ala. 159 (expressly overruling former decision to the contrary); Paris's case 36 Ala. 232; Lewis's case, 51 Ala. 1; Mitchell's case, 58 Ala. 417; Rash's case, 61 Ala. 89; Phillips's case, 68 Ala. 469; Clarke's case, 78 Ala. 474; Shelton's case, 73 Ala. 5; Breeden's case, 88 Ala. 20; Walker's case, 91 Ala. 76. **What constitutes venire** and the names to be included therein, see section 5005 and note. **Excusing jurors.** See notes to sections 5004 and 5020. **Quashing venire.**—See section 4997.

5274 (4450) (4873) (4172) (620). **List of talesmen not served.** If the persons summoned as jurors fail to appear, or if the panel is exhausted by challenges, neither the defendant nor his counsel is entitled to a list of the persons summoned to supply their places.

ARTICLE 8.

TRIAL; JOINT OR SEVERAL.

5275 (4451) (4892) (4190) (638). **Trial, joint or several, at the election of either defendant.**—When two or more defendants are jointly indicted, they may be tried, either jointly or separately, as either may elect.

Abolishes dicretionary power of court to grant or refuse severance and confers upon either co-defendant **the right to be tried separately** at his election. Woodley's case, 103 Ala. 23; Wilkins's case, 112 Ala. 55; Andy's case, 87 Ala. 23. Confers right to a separate trial; **no right to demand joint trial.**—Woodley's case, 103 Ala. 23; Jackson's case, 104 Ala. 1; Yarbrough's case, 105 Ala. 43; Wright's case, 108 Ala. 60; Wilkins's case, 112 Ala. 55. A **plea of not guilty,** interposed by one defendant alone, **operates a severance** as to him, and his co-defendants cannot object.—Woodley's case, 103 Ala. 23; Calloway's case, 103 Ala. 27. When two jointly indicted and **one not arrested,** court may order severance and proceed to try the other.—Wright's case, 108 Ala. 60; Yarbrough's case, 105 Ala. 43. **Insanity** of one defendant and separate arraignment of other, works a severance.—Marler's case, 67 Ala. 55. **If no demand** for separate trial, whether trial shall be joint or separate rests, as at common law, in **discretion of the court.**—Wilkins's case, 112 Ala. 55. When severance granted so as to allow two co-defendants to be tried jointly but apart from others, any further severance as to such two is matter of discretion with the court.—Malachi's case, 89 Ala. 134. When right must be claimed or held waived.—See circuit-court rule 32, Vol. I., p. 1200.

ARTICLE 9.

KEEPING TOGETHER AND DISCHARGING THE JURY.

5276 (4452) (4887). **When kept together, jury provided with lodging and refreshments.**—Whenever a jury is, by order of the court, kept together without separation during any night, or for an unusual length of time, it is the duty of the sheriff, with the approval of the court, at the expense of the county, to provide for the jurors suitable lodging and refreshments.

5277 (4453) (4906) (4201) (649). **Discharge of sick juror before retirement.**—If, before the jury retires, one of them becomes so sick as to incapacitate him for the performance of his duty, or any other cause renders it necessary, in the opinion of the court, to discharge a juror, such juror may be discharged, another summoned in his place, and the trial commenced anew.

Discharge of jury on account of sickness of one does not authorize acquittal, even if court refuses to summon another jury and commence anew; defendant not in jeopardy.—Mixon's case, 55 Ala. 129. What the record should show. Robinson's case, 52 Ala. 587. Sudden illness of juror or prisoner may authorize discharge.—Ned's case, 7 Port. 187; Hawes's case, 88 Ala. 37. Also sickness of juror's family.—Ib.; Parson's case, 22 Ala. 50. Court should be cautious about discharging jury.—Barrett's case, 35 Ala. 406. Judge may exercise a discretion, if necessities arise and reasonable time allowed jury for deliberation.—Ib. 406; Powell's case, 19 Ala. 577. Unauthorized discharge of a jury is equivalent to an acquittal, and is available on plea of former acquittal. What amounts to illegal discharge.—McCauley's case, 26 Ala. 135; Bell's case, 44 Ala. 393; Ex parte Clements, 50 Ala. 459; Bell's case, 48 Ala. 684; Cook's case, 60 Ala. 39. Court has no discretionary power in a capital case to discharge a jury for not agreeing.—Ned's case, 7 Port. 187; Parson's case, 22 Ala. 50.

Where a juror discharged himself, after being declared competent, and court supplied his place, held error.—Powell's case, 48 Ala. 154. Separation and misconduct of jury; effect of as ground for new trial.—Williams's case, 48 Ala. 85; s. c., 45 Ala. 58; Crocker's case, 47 Ala. 53; Robbins's case, 49 Ala. 394; Butler's case, 72 Ala. 179. Court recommends that separation of jury in all, as in capital felonies, be forbidden.—Williams's case, 45 Ala. 58. Excusing sick juror does not enlarge defendant's peremptory challenges.—Jackson's case, 78 Ala. 471. Before trial entered upon.—See note to section 5004.

5278 (4454) (4907) (4202) (650). **Discharge of sick juror, etc., after retirement.**—If, after the jury retire, one of them becomes so sick as to prevent the discharge of his duty, or any other cause or accident occurs to prevent their being kept together for deliberation, they may be discharged.

See note to preceding section.

5279 (4455) (4908) (4203) (651). **Discharge by adjournment.** A final adjournment of the court discharges the jury.

See note to section 5277.

ARTICLE 10.

WITNESSES; MODES OF PROCURING THEIR ATTENDANCE AND TESTIMONY.

5280 (4456) (4918) (4213) (661). **Subpœna not issued before arrest or bail.**—No subpœna must be issued in a criminal case, unless the defendant is in custody, or has given bail to answer the charge.

5281 (4457) (4919) (4214) (662). **Subpœnas for defendant's witnesses.**—If the defendant is in custody, or has given bail to answer the charge, it is the duty of the clerk of the court in which the prosecution is pending, on his application, to issue subpœnas for such witnesses as he requires, as well during the sitting of the court as in vacation.

5282 (4458) (4920) (4215) (663). **Subpœnas for state witnesses.** The clerk must also issue subpœnas for all witnesses on the part of the state, whose names are so marked on the indictment, if any, and for such other witnesses as the solicitor may direct him to summon.

5283 (4459) (4921) (4216) (664). **Solicitor may issue subpœnas.** The solicitor also has authority to issue subpœnas for witnesses on the part of the state, to appear either before the grand jury, or before any court in his circuit.

5284 (4460) (4923). **Summoning and attendance of witnesses.** It is the duty of clerks of the city and circuit courts to subpœna witnesses in causes set for trial to the day fixed for such trial, at the first term that such causes are placed upon the docket; and it shall not be necessary to resubpœna such witnesses to subsequent terms, but they shall be required to attend at such subsequent terms, upon the day fixed for the trial of such causes, and from day to day of such terms as required by the court until such causes are disposed of.

5285 (4461) (4924) (4218) (666). **Witnesses to attend on Wednesday, or second Monday, or day case set for trial.**—Where the term of the court is by law limited to one week, witnesses must be subpœnaed to attend on Wednesday of that week; and where the term is longer than one week, they must be subpœnaed to attend on Monday of the second week; and the criminal docket must, in each case, be taken up on the day on which the witnesses are subpœnaed to attend. But when a case is set for trial on a particular day, the witnesses therein must be subpœnaed to attend on such day.

5286 (4462) (4925). **Subpœnaed but once, except on reversal of judgment.**—Witnesses subpœnaed are bound to attend from term to term until the case is disposed of; but if a judgment is rendered in the case, which is reversed by the supreme court, new subpœnas must be issued for the state witnesses, and also for the defendant's witnesses on his application.

5287 (4463) (4926) (4219) (667). **Witnesses at special terms.** When a special term is directed for the trial of a person charged with a felony, all witnesses must be subpœnaed, or recognized to attend such special term.

5288 (4464) (4922) (4217) (665). **Subpœnas; how executed.** Subpœnas in criminal cases must be executed upon the witness either personally or by leaving a copy at his place of residence, unless the subpœna is issued during term time, when it must be executed by personal service.

ARTICLE 11.

WITNESSES; DEPOSITIONS TAKEN, WHEN AND HOW.

5289 (4465) (4932) (4227) (675). **Depositions in criminal cases; when taken by defendant.**—The defendant may take the deposition of any witness, who, from age, infirmity, or sickness, is unable to attend court; or who resides out of the state, or more than one hundred miles from the place of trial, computing by the route usually traveled; or who is absent from the state; or where the defense, or a material part thereof, depends exclusively on the testimony of the witness.

The provisions of this article apply to cases pending in court; not to preliminary examinations —Couch's case, 63 Ala. 163. When no cross-interrogatories have been filed by the state, and the defendant declines to read the deposition, it is not admissible for the prosecution.—Anderson's case, 89 Ala. 12.

5290 (4466) (4933) (4228) (676). **Affidavit, interrogatories, etc.** When the defendant desires to take the deposition of any witness under the provisions of the preceding section, he must make affidavit before some officer authorized to administer oaths, setting forth some one or more of the above causes for taking the deposition, and that the testimony of the witness is material, and must file with the clerk interrogatories to be propounded to the witness; a copy of which interrogatories must be served on the prosecutor, or on the

solicitor, if either of them is in the county; and such prosecutor or solicitor may, within ten days thereafter, file cross-interrogatories, to which the defendant may, within a like period of ten days, file rebutting interrogatories; at the expiration of which time, or, if no cross-interrogatories are filed, at the expiration of ten days from the filing of the interrogatories in chief, the clerk must issue a commission, accompanied with a copy of all the interrogatories filed; and the deposition must be taken at such time and place as the commissioner may appoint. If neither the solicitor nor prosecutor is in the county, service of the interrogatories may be had by filing the interrogatories in the office of the clerk for ten days.

5291 (4467) (4934) (4229) (677). **When taken by state.**—The deposition of any witness on the part of the state may be taken in like manner, and for similar causes, when the defendant files his written consent thereto.

5292 (4468) (4935) (4230) (678). **Taken as in civil cases; when not read.**—Depositions taken under the provisions of the three preceding sections are governed by the same rules which are applicable to depositions taken in civil cases at law; and no such deposition can be read in evidence on the trial, if it appear that the witness is alive, and able to attend court, and within its jurisdiction.

5293 (4469) (4614) (3916) (368). **Deposition of convict for defendant; notice served on solicitor.**—The defendant in any criminal prosecution may take the testimony of any convict in the penitentiary, on interrogatories and notice, as in other cases of taking testimony by interrogatories, the convict's answer being taken on oath and returned with the commission, as in other cases; but the notice, in such case, with a copy of the interrogatories, must be served on the solicitor of the circuit in which the prosecution is pending.

This provision has no reference to the competency of witness, but leaves that to general law; crossing interrogatories without objection is waiver of incompetency, otherwise objection allowed at any time before trial.—P. & M. Ins. Co. v. Tunstall, 72 Ala. 142.

ARTICLE 12.

PROCEEDINGS AGAINST DEFAULTING WITNESSES.

5294 (4470) (4929) (4224) (672). **Penalty against defaulting witness; judgment nisi.**—Any witness, who is duly summoned in a criminal case, and who fails to appear as commanded, forfeits one hundred dollars to the party at whose instance he was summoned, for which a conditional judgment must be rendered against him.

5295 (4471) (4930) (4225) (673). **Judgment absolute.**—When a conditional judgment has been rendered against a defaulting witness in a criminal case, if he does not appear at the same term and show a sufficient excuse for his default, a notice must be issued by the clerk of the court, notifying him of the rendition of such conditional

judgment, and that the same will be made absolute at the next term of the court, unless he appears and shows sufficient excuse for his default; which notice must be served by the sheriff and returned three days before the next term of the court; and if he fails to appear as required, or fails to show a sufficient excuse for his default, to be determined by the court, the judgment must be made absolute against him.

When two judgments rendered against defaulting witness, his proper remedy is to move to vacate last judgment.—Ryan's case, 13 Ala. 514.

5296 (4472) (4931) (4226) (674). **Two returns "not found" equivalent to personal service.**—If two notices of the rendition of such conditional judgment are returned "not found" by the proper officer, such returns are equivalent to personal service, and the judgment may be made absolute thereon.

ARTICLE 13.

WITNESSES; THEIR COMPETENCY AND SUFFICIENCY; ACCOMPLICES AND DEFENDANTS.

5297 (4473). **The defendant in criminal cases a competent witness for himself.**—On the trial of all indictments, complaints, or other criminal proceedings, the person on trial shall, at his own request, but not otherwise, be a competent witness; and his failure to make such request shall not create any presumption against him, nor be the subject of comment by counsel.

Before the amendment of this section, it permitted defendant to make an unsworn statement; as to nature of which see Blackburn's case, 71 Ala. 319; Chappell's case, Ib. 322; Beasley's case, Ib. 328. Weight of, and how considered by the jury.—Ib. Act construed.—Chappell's case, 71 Ala. 322. Defendant could not then be examined or impeached, as he was not a witness.—Ib.; Whizenant's case, Ib. 383. Could be commented on by counsel.—Ib. The defendant could not state his motive or belief.—Ib. 377; Burke's case, Ib. As to defendant's statement under such previous law, see also Williams's case, 74 Ala. 18. **Under present statute,** defendant electing to testify as a witness may be **compelled to disclose all he knows** touching the crime for which he is being tried, whether for or against him.—Thomas's case, 100 Ala. 53. But, against his objection, **cannot be examined touching his connection with other crimes.**—Clarke's case, 78 Ala. 474. When age in question, may be required to stand up before the jury.—Williams's case, 98 Ala. 52. Is subject to **cross-examination and impeachment** as any other witness.—Clarke's case, 78 Ala. 474; Rains's case, 88 Ala. 91; Kirby's case, 89 Ala. 63; Mitchell's case, 94 Ala. 68; Williams's case, 98 Ala. 52; Hicks's case, 99 Ala. 169; Thomas's case, 100 Ala. 53. His general character may be inquired into, but not his character for peace unless put in issue.—Dolan's case, 81 Ala. 11; Mitchell's case, 94 Ala. 68; Jones's case, 96 Ala. 102; McDaniel's case, 97 Ala. 14; Fountain's case, 98 Ala. 40; Byer's case, 105 Ala. 31. May be shown to have been convicted of larceny.—Thompson's case, 100 Ala. 70; Prior's case, 99 Ala. 196. **Comment** may be made on his failure or refusal, as a witness, to explain or rebut criminating facts.—Clarke's case, 87 Ala. 71; Cotton's case, 87 Ala. 103. Cannot testify as to uncommunicated motives or intentions.—Brown's case, 79 Ala. 51. May be recalled for further cross-examination, at any stage of the trial, as the court may allow.—Thomas's case, 100 Ala. 53. **Jury alone decides what weight** they will give his testimony.—McKee's case, 82 Ala. 32; Dick's case, 87 Ala. 61; Norris's case, 87 Ala. 85; Allen's case, 87 Ala. 107; Lewis's case, 88 Ala. 11. "Is to be considered in connection with all the other evidence in the case, and if they are not satisfied it is true, they may disregard it."—Lewis's case, 88 Ala. 11. Charge that they must give it the same consideration as they would the testimony of any other witness, properly refused.

McKee's case, 82 Ala. 32. On **joint trial** of two or more, if one elects to testify, he is subject to examination by every one concerned in the trial, the same as a disinterested witness.—Harris's case, 78 Ala. 482. **Improper comment** of counsel; trial-court must be first appealed to and exception reserved to its action, else not reviewable on appeal.—Stone's case, 105 Ala. 60. Bastardy, being only quasi criminal, defendant's failure to testify not protected from comment by this statute.—Miller's case, 110 Ala. 69.

5298 (4474). **Interest of witness.**—There shall be no exclusion of a witness in a criminal case because, on conviction of the defendant, he may be entitled to a reward, or to a restoration of property, or to the whole or any part of the fine or penalty inflicted; such objection is addressed to the credibility, not to the competency of the witness.

Bohannon's case, 73 Ala. 47; Hall's case, 53 Ala. 634.

5299 (4475) (4905) (4200) (648). **Competency of juror; must reveal fact known to him; how sworn and examined.**—If a juror has personal knowledge respecting any fact in controversy, he must declare it in open court during the trial; and if, during the retirement of the jury, a juror declares a fact as of his own knowledge, which could be evidence in the cause, the jury must forthwith return into court, and such juror must, in either case, be sworn and examined as a witness in the presence of the parties.

Being witness does not make one incompetent as juror, yet is ground for challenge for cause.—Bell's case, 44 Ala. 393; Commander's case, 60 Ala. 1; Atkins's case, Ib. 45.

5300 (4476) (4895) (4193) (641). **Testimony o accomplices; must be corroborated to authorize conviction of felony.**—A conviction of felony cannot be had on the testimony of an accomplice, unless corroborated by other evidence tending to connect the defendant with the commission of the offense; and such corroborative evidence, if it merely shows the commission of the offense, or the circumstances thereof, is not sufficient.

Accomplice defined; includes all particeps criminis.—Davidson's case, 33 Ala. 350. Statute construed.—Lumpkin's case, 68 Ala. 56; Marler's case, Ib. 580. What corroboration necessary.—Ib. 56; Ib. 580; Marler's case, 67 Ala. 55. Need not be corroborated in every material part.—Lockett's case, 63 Ala. 5; Smith's case, 59 Ala. 104; Montgomery's case, 40 Ala. 684. Flight and proximity to crime as corroborative evidence.—Ross's case, 74 Ala. 532. Test of complicity is, could the witness be indicted for the offense, either as principal or accessory; if not, he is competent.—Bass's case, 37 Ala. 469. Corroborative evidence required when complicity is shown; not if ury in doubt as to witness's complicity.—Ross's case, 74 Ala. 532; Childress's case, 86 Ala. 77. When confession as to part of offense sufficient corroboration.—Snoddy's case, 75 Ala. 23. Caution by court as to testimony of accomplice.—Lumpkin's case, 68 Ala. 56. Competency of wife against husband's accomplice.—Wood's case, 76 Ala. 35. Sufficiency of her testimony as corroborating accomplice.—Ib. Essential requisites to constitute complicity; must be a community of purpose.—See Harrington's case, 36 Ala. 236; Frank's case, 27 Ala. 37; Thompson's case, 25 Ala. 41; Davidson's case, 33 Ala. 350; English's case, 35 Ala. 428; Bird's case, 36 Ala. 279; Smith's case, 37 Ala. 472. Admissibility of threats made against deceased, by accomplice who is a witness, to show malice in witness to impeach him.—Marler's case, 67 Ala. 55. In misdemeanors, but not in felonies, a conviction may be had on uncorroborated testimony of accomplice alone. Mose's case, 58 Ala. 117; Lockett's case, 63 Ala. 5. How weighed in misdemeanors.—Mose's case, supra. When cannot refuse to answer questions tending to criminate himself.—Lockett's case, supra. When changing rule of evidence will be ex post facto.—Hart's case, 40 Ala. 32. Corroboration need not be to any particular fact testified to by accomplice; possession of stolen goods by accused, etc., may be sufficient (section fully discussed).—Malachi's case, 89 Ala. 134. Where another witness testifies to having heard the words "There

ain't no more to get," testified to by accomplice, this may be sufficient corroboration.—Burney's case, 87 Ala. 80. A prisoner who procures another to aid him in escaping from prison, is not an accomplice of the party aiding him in the sense of the statute.—Ash's case, 81 Ala. 76. Using accomplice as witness for prosecution, as ground for dismissing case against him.—Long's case, 86 Ala. 36.

5301 (4477) (4893) (4191) (639). **Discharge and acquittal of defendant to be witness for state.**—When two or more defendants are jointly indicted, the court may, at any time before the evidence for the defense has commenced, order any defendant to be discharged from the indictment, in order that he may be a witness for the prosecution; and such order operates as an acquittal of such defendant, provided he does testify.

South's case, 86 Ala. 617.

5302 (4478) (4894) (4192) (640). **Competency of co-defendant as witness; when verdict of acquittal directed.**—When two or more defendants are jointly indicted, the court may direct a verdict of acquittal to be entered in favor of any one of them, against whom there is not, in the opinion of the court, evidence sufficient to put him on his defense; and being acquitted, he may be a witness.

Statute imposes delicate and responsible duties in discretion of court; when its action not reviewed.—Gassenheimer's case, 52 Ala. 313. When court may disallow a co-defendant to be discharged and testify although no evidence against him.—Brister's case, 26 Ala. 107. When court may refuse to pass on evidence and discharge a co-defendant.—Washington's case, 58 Ala. 355. If case against co-defendant nol. prossed, or if there is a severance, he may be a witness —Henderson's case, 70 Ala. 23. Defendants as witnesses for and against each other; when allowed.—See Henderson's case, 70 Ala. 23; Marler's case, 67 Ala. 65; Morgan's case, 45 Ala. 65; South's case, 86 Ala. 617.

ARTICLE 14.

EXAMINATION OF WITNESSES, AND MATTERS OF PROOF IN GENERAL.

5303 (4479) (4897) (4195) (643). **Proof of intent to injure or defraud.**—When an intent to injure, defraud or cheat, is necessary to be shown in order to constitute the offense, it is sufficient if such intent be to injure, defraud, or cheat the United States, this state, or any other state, or any public officer thereof, or any county, city, town, corporation, body politic, or private individual.

5304 (4480) (4898) (4196) (644). **Proof of intent, mode, means, etc.; duty of jury.**—When the intent with which, the mode in, or the means by which, an act is done, is essential to the commission of the offense, and such offense may be committed with different intents, in different modes, or by different means, if the jury are satisfied that the act was committed with one of the intents, in one of the modes, or by either of the means charged, it is sufficient; and they must convict, although uncertain as to which of the intents charged existed, or in which mode, or by which of the means charged, such act was committed.

When criminal intent depends on knowledge of particular facts, honest ignorance or mistake of such facts may absolve from criminality.—See Dotson's case, 62 Ala. 141. Criminal intent presumed from an unlawful act.—Bain's

case, 61 Ala. 76. Criminality necessarily follows from an act intentionally done. Hoover's case, 59 Ala. 57. The law presumes that every person intends to do what he does; and that the natural, necessary, and probable consequences of his acts were intended.—McElroy's case, 75 Ala. 9; Stein's case, 37 Ala. 123. Intention or motive, how proved; is an inferential fact for jury.—Burke's case, 71 Ala. 377; Whizenant's case, Ib. 383. Cannot be testified to by a witness or defendant.—Ib. 383; Brown's case, 79 Ala. 51. What a variance in proof from allegation of mode or means.—See Phillips's case, 68 Ala. 469; Rodgers's case, 50 Ala. 102.

5305 (4481) (4899) (4197) (645). **Proof as to results of acts, etc.; when duty of jury to convict.**—When an act done may be attended by more results than one, either of which is sufficient to constitute the offense, the jury must convict, if satisfied that any one of the results charged was produced by the act, although uncertain as to which.

ARTICLE 15.

VERDICT AND POLLING OF THE JURY.

5306 (4482) (4904) (4199) (647). **Verdict may be of less offense than charged, etc.**—When the indictment charges an offense of which there are different degrees, the jury may find the defendant not guilty of the degree charged, and guilty of any degree inferior thereto, or of an attempt to commit the offense charged; and the defendant may also be found guilty of any offense which is necessarily included in that with which he is charged, whether it be a felony or a misdemeanor.

Conviction allowed of assault, or assault and battery, under indictment for assault to murder.—Turbeville's case, 40 Ala. 715; Mooney's case, 33 Ala. 419. Of assault to rape, or of an assault and battery, under indictment for rape. Richardson's case, 54 Ala. 158; Lewis's case, 30 Ala. 54. Of petit larceny under indictment for grand larceny.—Cohen's case, 50 Ala. 109; Bolling's case, 98 Ala. 80. Of assault and battery under indictment for affray.—McLellan's case, 53 Ala. 640. Same under indictment for maltreatment of convict.—Sanders's case, 55 Ala. 43. Of larceny under indictment for robbery.—Allen's case, 58 Ala. 98; Morris's case, 97 Ala. 82. Of attempt to commit larceny under indictment for larceny.—Wolf's case, 41 Ala. 412; Edmond's case, 70 Ala. 8. See Burke's case, 74 Ala. 399.

5307 (4483) (4909) (4204) (652). **Verdict and judgment as to several of joint defendants.**—When several persons are indicted and tried jointly, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they agree, on which a judgment must be entered accordingly; and the case, as to the other defendants, may be tried by another jury.

Where two jointly indicted and proof shows offense committed severally, can be no conviction of either or both.—Johnson's case, 44 Ala. 414. Nor if each committed offense at different times.—McGehee's case, 58 Ala. 360. Nor conviction of one on proof of other's guilt.—Rowland's case, 55 Ala. 210. See also Finch's case, 81 Ala. 41; South's case, 86 Ala. 617.

5308 (4484) (4910) (4205) (653). **Polling jury.**—When a verdict is rendered, and before it is recorded, the jury may be polled, on the requirement of either party; in which case, they must be severally asked if it is their verdict; and if any answer in the negative, the jury must be sent out for further deliberation.

State or defendant has right to poll jury; accused should be present. Hughes's case, 2 Ala. 102; Brister's case, 26 Ala. 107. Cannot be exercised until verdict read aloud in court.—Brister's case, supra. Inquiry cannot be made into reasons or motives for assenting to verdict.—Winslow's case, 76 Ala. 42; Prior's case, 77 Ala. 56. Right waived or lost by prisoner failing to assert it at proper time, or by consenting for clerk to receive verdict, etc. Brown's case, 63 Ala. 97.

ARTICLE 16.

CHANGE OF VENUE, OR REMOVAL OF TRIAL TO ANOTHER COUNTY.

5309 (4485) (4911) (4206) (654). **Change of venue; trial removed on defendant's application, etc.**—Any person, charged with an indictable offense, may have his trial removed to another county, on making application to the court, setting forth specifically the reason why he cannot have a fair and impartial trial in the county in which the indictment is found; which application must be sworn to by him, and must be made as early as practicable before the trial, or may be made after conviction, on a new trial being granted, and the refusal of such application may, after final judgment, be reviewed and revised on appeal.

What application must state.—Taylor's case, 48 Ala. 181. Practice; both parties may be heard.—Ib.; Ex parte Chase, 43 Ala. 303. When counter-affidavit insufficient.—Birdsong's case, 47 Ala. 68. What not sufficient objection to affidavits.—Taylor's case, 48 Ala. 180. Court not bound to hear oral testimony.—Ib. When application too long delayed.—Wolf's case, 49 Ala. 359. Agreement of counsel is no legal reason to remand case back to county from which removed, nor for mandamus to compel such action.—Ex parte Dennis, 48 Ala. 305. But if case is so transferred back, accused estopped from questioning validity of order of such transfer.—Paris's case, 36 Ala. 232. City court has jurisdiction to try case from another county.—Lewis's case, 49 Ala. 1. Order of removal must be made in presence of accused.—Ex parte Bryan, 44 Ala. 402. Change of venue sets aside continuance.—Ex parte Johnson, 18 Ala. 414. Prior to amendatory act of February 17, 1885, the granting or refusing of change of venue was held discretionary with the trial-court, and not revisable, in Evans's case, 62 Ala. 6; Bryan's case, 43 Ala. 321; Wesley's case, 61 Ala. 282; Kelly's case, 52 Ala. 361 (overruling the contrary doctrine in Ex parte Chase, 43 Ala. 303; Edwards's case, 49 Ala. 334; Lewis's case, Ib. 1; Birdsong's case, 47 Ala. 68; Taylor's case, 48 Ala. 180; Murphy's case, 45 Ala. 32). See Posey's case, 73 Ala. 490; Ex parte Banks, 28 Ala. 28; Ware's case, 10 Ala. 814; Brookshire's case, 2 Ala. 303. **Under present statute** change of venue is matter of right if application made in proper time and supported by sufficient proof.—Hussey's case, 87 Ala. 121; Seams's case, 84 Ala. 410. **Application** must be made as early as practicable; when comes too late.—Fallin's case, 86 Ala. 13; Shackleford's case, 79 Ala. 26; Byers's case, 105 Ala. 31. The **inquiry** is limited to whether accused can have a fair and impartial trial at the time of the application, and not at some prior date.—Hawes's case, 88 Ala. 37. Not granted on the mere belief of the party or his witnesses that such trial cannot be had; "facts and circumstances rendering such a trial improbable must appear."—Jackson's case, 104 Ala. 1; Salm's case, 89 Ala. 56; Hawes's case, 88 Ala. 37; Seams's case, 84 Ala. 410; Byers's case, 105 Ala. 31. **Evidence** for and against the application is confined to affidavits; witnesses cannot be examined ore tenus.—Hawes's case, 88 Ala. 37. The practice of receiving counter-affidavits not violative of any constitutional right of the accused.—Hussey's case, 87 Ala. 121. Bill of exceptions necessary to carry up lower court's ruling on application.—Hawk's case, 84 Ala. 6; Jones's case, 77 Ala. 98. **On appeal** the ruling of the lower court is presumed to be correct and will not be reversed unless error affirmatively appears. Supreme court "must see, and see clearly, that its action was wrong."—Hawes's case, 88 Ala. 37; Edwards's case, 49 Ala. 334. Evidence examined and held insufficient to reverse judgment overruling application.—Hawes's case, 88 Ala. 37; Rains's case, 88 Ala. 91; Hussey's case, 87 Ala. 121; Prater's case, 107 Ala. 26. When sufficient.—Seams's case, 84 Ala. 410. See also Posey's case, 73 Ala. 490.

5310 (4486) (4912) (4207) (655). **Removal to nearest county, and but once.**—The trial must be removed to the nearest county free from exception, and can be removed but once.

Can be removed but once.—Ex parte Dennis, 48 Ala. 304; Aiken's case, 35 Ala. 399. Must be to nearest unobjectionable county, regardless of convenience of witnesses, time of court, etc.—Ex parte Reeves, 51 Ala. 55. Court must choose the county.—Ex parte Hodges, 59 Ala. 305. Presumption in favor of correctness of order of removal.—Lewis's case, 49 Ala. 1.

5311 (4487) (4913) (4208) (656). **Consent to depositions, and payment of mileage to clerk.**—When the defendant is charged with a misdemeanor, an order for the removal of his trial must not be made, unless he consents of record that the witnesses for the prosecution may be examined on interrogatories, on such terms as the court may prescribe; and he must also, at the time the order is made, pay the clerk five cents for each mile to and from the courthouse of the county to which the trial is removed.

5312 (4488) (4914) (4209) (657). **Transcript certified by clerk, and subpœnas forwarded.**—When an order for the removal of the trial is made, the clerk must make out a transcript of all the entries, orders and proceedings in the case, including the organization of the grand jury, the indictment, the indorsements thereon, all the entries relating thereto, the undertakings or recognizances of the defendant, all the orders and judgments thereon, and the order for the removal of the trial; must attach his certificate thereto, and forward the package under seal, by a special messenger, or by express, or by registered mail, or deliver it in person, to the clerk of the court to which the trial is ordered to be removed; and he must also inclose in the package, and forward or deliver in the same manner, the original subpœnas in the case.

Transcript need not be under seal; may be amended or certified in new county.—Childs's case, 55 Ala. 25; Boddie's case, 52 Ala. 395; Hall's case, 51 Ala. 9 (overruling Williams's case, 48 Ala. 85). When objection to certificate shall be made.—Boddie's case, supra. How certified transcript applied if lost or destroyed.—Dunn's case, 60 Ala. 35. Clerk must not transmit original papers.—Harrall's case, 26 Ala. 52.

5313 (4489) (4915) (4210) (658). **Subpœnas issued; by whom.** At any time before the delivery of the transcript to the clerk of the court to which the trial is removed, subpœnas for witnesses must be issued, on the application of either the defendant or the solicitor, by the clerk of the court in which the indictment was found, commanding such witnesses to appear at the court to which the trial is removed, which subpœnas must be executed by the sheriff, and returned to the clerk of the latter court; and the clerk must, after the delivery of the transcript to him, issue the subpœnas for witnesses.

5314 (4490) (4916) (4211) (659). **Trial had on transcript; certiorari ordered when necessary.**—The defendant must be tried in the court to which the case is removed, on the copy of the indictment thus certified; and such court may, if necessary, on a proper showing, order the clerk of the court in which the indictment was found to correct any mistake in the transcript, or to certify any portion of the record which he may have omitted.

Court may issue certiorari for certified copies of papers, etc., if originals have been sent; will not operate discontinuance.—Harrall's case, 26 Ala. 52. Sufficiency of transcript.—Scott's case, 37 Ala. 117; Brister's case, 26 Ala. 107. Defective certificate may be supplied by testimony of clerk.—Hall's case, 51 Ala. 9; Bishop's case, 30 Ala. 34. What record of conviction on change of venue must show; when agreement of counsel insufficient.—Goodloe's case, 60 Ala. 93. See also note to section 5312.

5315 (4491) (4917) (4212) (660). **Fines and forfeitures, fees of jurors and witnesses not affected by removal.**—All fines and forfeitures in such cases go to the county in which the indictment was found, and judgment must be rendered accordingly; and the fees of all jurors and witnesses, on being properly certified by the clerk of the court to which the trial is removed, are a charge on the county in which the indictment was found, in like manner as if the trial had not been removed.

Greene County v. Hale County, 61 Ala. 72.

ARTICLE 17.

PROCESS ON INDICTMENT AGAINST CORPORATION; TRIAL AND JUDGMENT.

5316. Indictment against corporation to be docketed and notice issued.—When an indictment is returned against a corporation doing business in this state, such indictment shall be forthwith docketed, and the clerk of the court shall issue a notice thereof to the defendant corporation, accompanied by a certified copy of the indictment. Feb. 28, 1887, p. 116, §1.

5317. How notice and copy served; when case stands for trial. Ib. Such notice and copy may be served upon any officer or agent of the defendant corporation authorized by law to receive service of summons or other civil process issuing against such corporation, and upon the return of the sheriff showing proper service, the indictment stands for trial.

5318. Defendant failing to plead, plea of not guilty entered.—If Ib. the defendant corporation fails to appear and plead to the indictment, the court must cause the plea of not guilty to be entered for it; and the trial shall proceed as if the corporation had appeared and pleaded not guilty; but in such case proof must be made to the court that the person upon whom the notice and copy of the indictment were served was an officer or agent of the corporation authorized by law to receive such service.

5319. Upon conviction judgment rendered for fine and costs and execution issued.—Upon the conviction of such corporation, judgment shall be rendered against it for the fine imposed, together with the costs of the prosecution, and execution thereon shall forthwith issue against the property of the corporation; and other executions may issue thereon until such judgment is satisfied. But in case of appeal from such judgment, the execution thereof may be superseded as in civil cases. Ib. §2.

CHAPTER 181.

PROSTITUTION. 5320.

Feb. 15, 1897, p. 944, §2.

5320. Employing, harboring, procuring or using girl over ten and under eighteen years of age for purpose of prostitution or sexual intercourse.—Any person, who employs, harbors or procures, or causes to be taken, received, employed, harbored, procured or used for the purpose of prostitution, any girl over ten and under eighteen years of age; or any parent, guardian or other person having the legal charge and control of such girl, who consents to the taking, receiving, employing, harboring, procuring or using of such girl for the purpose of prostitution, or for the purpose of sexual intercourse by any person other than the husband of such girl, must on conviction be punished by a fine of not less than fifty, nor more than five hundred dollars, and by imprisonment in the county jail for not less than six months.

CHAPTER 182.

PUBLIC HEALTH, SAFETY AND CONVENIENCE; OFFENSES CONCERNING.

ARTICLE 1.—UNWHOLESOME FOOD AND ADULTERATED LIQUORS AND CANDIES. 5321–5328.
2.—POISONING SPRINGS AND WELLS; POLLUTING RUNNING STREAMS AND WATER-SUPPLIES. 5329–5331.
3.—SELLING POISONS WITHOUT PRECAUTION. 5332.
4.—CONCERNING PHYSICIANS, DENTISTS AND PHARMACISTS. 5333–5335.
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8.—USING FIREARMS IN PUBLIC PLACES, AND SELLING WEAPONS TO MINORS. 5352–5355.
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10.—PERMITTING DISEASED ANIMALS TO RUN AT LARGE. 5357, 5358.
11.—CONCERNING RAILROADS, STEAMBOATS, VESSELS AND PILOTS. 5359–5383.
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13.—CONCERNING MINES AND MINING. 5409–5411.

ARTICLE 1.

UNWHOLESOME FOOD AND ADULTERATED LIQUORS AND CANDIES.

5321 (4070) (4219) (3631) (89). **Selling or exposing for sale tainted or diseased meat.**—Any butcher, or other person, who sells, or offers or exposes for sale, or suffers his apprentice, servant, agent,

or other person for him, to sell, offer, or expose for sale, any tainted, putrid, or unwholesome fish or flesh, or the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased, for the purpose of being sold or offered for sale, must, on conviction, be fined not less than twenty, nor more than two hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

5322 (4071) (4220) (3632) (90). **Selling or exposing for sale unwholesome bread.**—Any baker, or other person, who sells, or offers or exposes for sale, or suffers his servant, apprentice, agent, or other person for him, to sell, offer, or expose for sale, any bread made from sour or unwholesome flour, must, on conviction, be fined not less than twenty, nor more than two hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

5323 (4072) (1602) (1297) (1116). **Selling bread without baker's name stamped thereon.**—Any person, who sells or exposes for sale any bread, biscuit, or cracker, without having the name, or the initials of the Christian and surname of the baker legibly marked on each biscuit, cracker, or loaf of bread, must, on conviction, be fined not more than twenty dollars.

5324 (4073) (1603) (1298) (1117). **Counterfeiting or using another's name on bread.**—Any person, who counterfeits the name or initials of another on any bread, biscuit, or cracker, or who marks any bread, biscuit, or cracker with any other initials or name than his own, must, on conviction, be fined not less than twenty, nor more than fifty dollars.

5325 (4074) (4221) (3633) (91). **Adulterating sugar and other articles of food.**—Any merchant, grocer, or other person, who mixes any foreign matter or substance with sugar, syrup, or molasses, lard or butter, or other article of food, so as to deteriorate or change the quality thereof, or sells, or offers or exposes for sale, such adulterated sugar, syrup, or molasses, lard or butter, or other article of food, or who suffers his servant, agent, apprentice, or other person for him, so to adulterate, or to sell, offer or expose for sale, such adulterated sugar, syrup, or molasses, lard or butter, or other article of food, must, on conviction, be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

5326. Manufacturing or selling oleomargarine.—Any person, Feb. 18, 1895, p. 777 who renders and manufactures, sells, offers for sale, exposes for sale, or has in his possession with intent to sell or serve to persons, guests, boarders, or inmates, in any hotel, eating-house, restaurant, dining-car, boarding-house, public or private hospital, school, or penal institution, any article, product, or compound, made wholly or partly out of any fat, oil, oleaginous substance, or compound thereof, not produced directly and at the time of manufacture from unadulterated milk, or cream from the same, which shall be in imitation

of yellow butter produced from pure unadulterated milk, or cream from the same, must, on conviction, be fined not less than twenty, nor more than one hundred dollars; but this section shall not be so construed as to prohibit the manufacture or sale of oleomargarine in such manner as will advise the consumer of its real character, free from coloration or ingredients that cause it to look like butter, by having it stamped with its true name.

Statute construed and sustained as a valid exercise of the police power. Cook's case, 110 Ala. 40.

5327 (4075) (4222) (3634) (92). **Adulterating liquors and selling same.**—Any manufacturer, brewer, distiller, grocer, tavern-keeper, retailer of spirituous, vinous, or malt liquors, or wholesale dealer of spirituous, vinous, or malt liquors, or any other person, who makes, distills, sells, or offers to sell, or exposes for sale, or permits his servant, apprentice, clerk, or agent, or other person for him, to sell, offer or expose for sale, any such liquors which have been adulterated by the mixture or addition of any poisonous, unwholesome substances, or which are composed or compounded, in whole or in part, of any drug or oil, must, on conviction, be fined not less than two hundred and fifty, and not more than one thousand dollars.

Feb. 16, 1897, p. 1179.

5328. Adulterating candies and selling same; special charge. Any person, firm or corporation that shall manufacture or knowingly sell or give away or keep for sale any candies, confectioneries of any kind adulterated by the admixture of terra alba, barytes, talc or other earthy or mineral substance, or any poisonous colors, flavors, or extracts or other ingredients injurious to health, shall be guilty of a misdemeanor, and, upon conviction thereof, may be punished by a fine of not less than fifty dollars and not more than five hundred dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county, for a period not exceeding six months, at the discretion of the court. This section shall be given in charge to the grand jury.

ARTICLE 2.

POISONING SPRINGS AND WELLS; POLLUTING RUNNING STREAMS AND WATER-SUPPLIES.

5329 (4076) (4240) (3682) (139). **Poisoning springs, wells, etc.** Any person, who willfully or wantonly poisons any spring, fountain, well, or reservoir of water, must, on conviction, be imprisoned in the penitentiary for not less than ten, nor more than twenty years. (Form 69.)

As amended Dec. 12, 1892, p. 107.

5330 (1464) (1728) (4435). **Depositing dead animals and fowls in running streams.**—Any person, who deposits the body of a dead animal or fowl in any running stream, must, on conviction, be fined ten dollars; and one-half of the fine must go to the informer. Justices and constables are especially charged with the enforcement of this section.

5331. Polluting water supply of town or city.—It shall be unlawful for any person to knowingly deposit any dead animal or nauseous substance in any source, stand-pipe or reservoir, from which water is supplied to any city or town of this state. Any person violating the provisions of this section, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not exceeding five hundred dollars, and may be sentenced to hard labor for the county not exceeding one year. Feb. 17, 1897, p. 1281.

ARTICLE 3.

SELLING POISONS WITHOUT PRECAUTION.

5332 (4077) (4242) (3683) (140). **Selling poisons without precautions to prevent accidents.**—Any person, who sells and delivers any arsenic, or any of its preparations, corrosive sublimate, white or red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnia, or any poisonous vegetable alkaloids or their salts, or the essential oil of almonds, opium or its preparations, except paregoric and other preparations of opium containing less than two grains to the ounce, aconite, belladonna, colchicum, conium, nux vomica, henbane, savine, ergot, cotton-root, cantharides, creosote, veratrum, digitalis, and their pharmaceutical preparations, croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic and oxalic acids, not having the word "Poison" and the name and place of business of the seller written or printed on a label attached to the box, vessel, or paper in which the poison is contained; or who sells or delivers any such poison until, after due inquiry, he shall find that the purchaser is aware of its poisonous character and represents that it is to be used for a legitimate purpose; or who sells or delivers any such poison to any apprentice, or to any child under ten years of age, without the written order of the master of such apprentice, or the parent, guardian, or person having the legal charge of such child, must, on conviction, be fined not less than ten, nor more than one hundred dollars. As amended Feb. 28, 1887, p. 106, §8.

ARTICLE 4.

CONCERNING PHYSICIANS, DENTISTS AND PHARMACISTS.

5333 (4078) (4244). **Practicing medicine or surgery without certificate of qualification.**—Any person, who practices medicine or surgery without having first obtained a certificate of qualification from one of the authorized boards of medical examiners of this state, must, on conviction, be fined not less than twenty-five, nor more than one hundred dollars. Feb. 18, 1891, p. 857.

Valid exercise of police power.—Bell's case, 104 Ala. 79; Brooks's case, 88 Ala. 122; Stough's case, Ib. 234. "Certificate of qualification," not "license," required.—Nelson's case, 97 Ala. 79. "Person practicing medicine" and "physician," synonymous.—Harrison's case, 102 Ala. 170; Brooks's case, 88 Ala. 122. No offense for one not holding himself out as a physician to give medicine or advice without compensation.—Nelson's case, 97 Ala. 79.

5334 (4079) (4244). **Practicing dentistry without license from dental examiners.**—Any person practicing dentistry, not having obtained license from the board of dental examiners, must, on conviction, be fined not less than fifty, nor more than three hundred dollars; but the extraction of teeth only must not be considered a violation of this section.

Nicholson's case, 100 Ala. 132.

Feb. 25, 1889, p. 59, §§1, 2.

5335. Engaging in business of pharmacy without certificate of registration.—Any person, not having a certificate of registration from the board of pharmacy, who carries on any pharmacy, drug-store, apothecary-shop, or store for the purpose of retailing, compounding, or dispensing drugs, medicines, or poisons for medicinal uses; or any person who, being the proprietor of any pharmacy, drug-store, apothecary-shop, or store for the purpose of retailing, compounding, or dispensing drugs, medicines, or poisons for medicinal uses, permits any person except a registered pharmacist to compound or dispense the prescriptions of physicians, or to retail or dispense drugs, poisons, or medicines for medicinal uses, except as an aid to, and under the immediate supervision of a registered pharmacist, must, on conviction, be fined not less than twenty-five, nor more than one hundred dollars; but the provisions of this section shall operate only in cities and towns having a population of nine hundred or more, and within two miles in every direction from the corporate limits of such cities and towns. This section does not apply to physicians putting up their own prescriptions.*

ARTICLE 5.

SELLING CIGARETTES TO MINORS.

Dec. 11, 1890, p. 201.

5336. Selling cigarettes to minors; jurisdiction of justices. Any person, who sells, barters, exchanges or gives to any minor, any cigarettes, or cigarette tobacco, or cigarette paper, or any substitute for either of them, must, on conviction, be fined not less than ten, nor more than fifty dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than thirty days; and justices of the peace and notaries public with the powers of justices of the peace have jurisdiction of such offense concurrent with that of the county court.

*By act approved February 18, 1897, p. 1450, the original act was amended so as to make the statute apply to towns and cities of five hundred or more inhabitants, or within two miles thereof. The effect of the amendment is to substitute "five hundred" for "nine hundred" in this section.

ARTICLE 6.

HEALTH AND QUARANTINE LAWS.

5337 (4080). **Failure of head of family to report pestilential or infectious disease.**—Any head of a family, or any other person, upon whose premises a case of pestilential or infectious disease occurs, which is not under the charge of a physician, who refuses or willfully fails to report the same to the county health officer, must, on conviction, be fined not less than five, nor more than twenty-five dollars.

5338 (4081). **Failure of midwife to report birth.**—Any midwife, attending a childbirth, who refuses or willfully fails to make to the county health officer, within the time prescribed by the county board of health, a full report, specifying the name of the parents, if known, the date of the birth, and the sex and color of the child, with such other details as are required by the board of health, must, on conviction, be fined not less than five, nor more than twenty-five dollars.

5339 (4082). **Failure of midwife to report death.**—Any midwife, having charge of a patient at the time of death, who refuses or willfully fails to make to the county health officer, within such time as may be prescribed by the county board of health, a full report of the name, age, sex, color, date, place, and cause of the death of such patient, so far as known, together with such other details as may be required by the county board of health, must, on conviction, be fined not less than five, nor more than twenty-five dollars.

5340 (4083). **Failure of physician to report pestilential or infectious diseases.**—Any physician, or person practicing medicine, being called upon to treat a case of pestilential or infectious disease in the limits of the county, who refuses or willfully fails to make to the county health officer, within such time as may be prescribed by the county board of health, a full report of the same, specifying the character of the disease, the name and locality of the patient, together with such other details as may be required by the county board of health, must, on conviction, be fined not less than ten, nor more than fifty dollars.

5341 (4084). **Failure of physician to report birth.**—Any physician, or person practicing medicine or surgery, attending a childbirth, who refuses or willfully fails to make to the county health officer, within the time prescribed by the county board of health, a full report, specifying the name of the parent, if known, the date of the birth, and the sex and color of the child, with such other details as are required by the board of health, must, on conviction, be fined not less than ten, nor more than fifty dollars.

5342 (4085). **Failure of physician to report death.**—Any physician, or person practicing medicine or surgery, having charge of a patient at the time of death, who refuses or willfully fails to make

to the county health officer, within such time as may be prescribed by the county board of health, a full report of the name, age, sex, color, date, place, and cause of the death of such patient, so far as is known, together with such other details as may be required by the county board of health, must, on conviction, be fined not less than ten, nor more than fifty dollars.

5343 (4086). **Failure of health officer, etc., of Escambia county to report yellow fever in Florida.**—If the health officer or probate judge of the county of Escambia has good cause of suspicion or of belief that yellow fever exists in either of the counties of Santa Rosa or Escambia, in the State of Florida, and fails to report the same to the governor of this state, he must, on conviction, be fined not less than five hundred dollars.

5344 (4087). **Failure of judge of probate to act upon notice from governor.**—If the judge of probate of Escambia county, upon being notified by the governor of this state that there is good cause for suspicion or belief that yellow fever exists in either or both of the counties of Santa Rosa or Escambia, in the State of Florida, fails to take such steps as he is by law authorized to take to prevent the introduction or spread of contagious or infectious diseases, or to establish such hospitals, or to appoint such guards, as are necessary and suitable for that purpose, must, on conviction, be fined not less than five hundred dollars.

5345 (4088) (4223) (1213) (962). **Penalty for violation of quarantine regulations of ships and vessels.**—Any person, who violates the regulations prescribed by the corporate authorities of any town or city, or by the court of county commissioners of any county in relation to vessels arriving in the harbor, or in the vicinity of such town or city, after notice thereof has been given for five days in some newspaper printed in such town or city, or when there is none, by notice posted up at some public place therein for the same length of time, must, on conviction, be fined not less than fifty dollars.

5346 (4089) (4224) (1215) (964). **Refusal of information to health officer; penalty.**—Any master, seaman, or passenger, belonging to any vessel supposed to have any infection on board, or from a port where any dangerous infectious disease prevails, who refuses to answer on oath such inquiries as are made by any health officer relating to any infection or disease, must, on conviction, be fined not less than one hundred dollars.

5347 (4090) (4225) (1216) (965). **Breach of quarantine; penalty.**—The master of any vessel, ordered to perform quarantine, must deliver to the officer appointed to see it performed his bill of health, and manifest, log-book and journal; if he fails so to do, or to repair, in proper time after notice, to the quarantine-ground, or departs thence without authority, he must, on conviction, be fined not less than two hundred dollars.

5348 (4091) (4226) (1218) (967). **Travelers from infected district compelled to perform quarantine; breach and penalty.**—Any person, coming into a city or town by land from a place infected with

a contagious disease, may be compelled to perform quarantine by the health officer, and restrained from traveling until discharged; and any person thus restrained, traveling before he is discharged, must, on conviction, be fined not less than one hundred dollars.

5349 (4092) (4227) (1220) (969). **Disposition of fines.**—All fines recovered under the three preceding sections must be paid into the city or town treasury.

5350. Removing vessel from quarantine.—Any master, or other person in charge of a vessel in quarantine, who shall remove or take, or who shall aid or procure to be removed or taken, such vessel from quarantine before she is given pratique, is guilty of a misdemeanor, and must, on conviction, be punished accordingly. Feb. 16, 1891, p. 862, §13.

ARTICLE 7.

STORING GUNPOWDER IN TOWN LIMITS.

5351. (4093) (4236) (3748) (201). **Storing gunpowder in city or town.**—Any person, who keeps on hand, at any one time, within the limits of any incorporated city or town, for sale or for use, more than fifty pounds of gunpowder, must, on conviction, be fined not less than one hundred dollars.

ARTICLE 8.

USING FIREARMS IN PUBLIC PLACES, AND SELLING WEAPONS TO MINORS.

5352. Discharging cannon or firing salute in capitol grounds without permission of governor.—Any person, who discharges any cannon or fires any salute in the grounds of the state capitol, without the permission of the governor, must, on conviction, be fined not less than two hundred, nor more than five hundred dollars. Feb. 18, 1891, p. 1334, §2.

5353 (4094) (4228) (3671) (129). **Using firearms while fighting in public place.**—Any person, who, while fighting in the streets of any city or town, or at a militia muster, or at any public place, whether public in itself, or made public at the time by an assemblage of persons, uses, or attempts to use, except in self-defense, any kind of firearms, must, on conviction, be fined not less than two hundred nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not less than six months. (Form 89.)

5354 (4095) (4229) (3694) (148). **Shooting along or across public road.**—Any person, who discharges a gun, or any other kind of firearms, along or across any public road, must, on conviction, be fined not less than ten, nor more than fifty dollars.

Public road defined.—McDade's case, 95 Ala. 28; Harper's case, 109 Ala. 66. Proof must show road was public.—Johnson's case, 105 Ala. 113.

5355 (4096) (4230) (3751) (204). **Selling, etc., pistol or bowie-knife to minor.**—Any person, who sells, gives, or lends to any minor, any pistol or bowie-knife, or other knife of like kind or description, must, on conviction, be fined not less than fifty, nor more than five hundred dollars.* (Form 82.)

Coleman's case, 32 Ala. 581.

ARTICLE 9.

HORSE-RACING ON PUBLIC ROAD.

5356 (4097) (4229) (3694) (148). **Engaging in horse-race on public road.**—Any person, who engages in a horse-race on any public road, must, on conviction, be fined not less than ten, nor more than fifty dollars. (Form 53.)

Redman's case, 33 Ala. 428.

ARTICLE 10.

PERMITTING DISEASED ANIMALS TO RUN AT LARGE.

Feb. 16, 1895, p. 696.

5357. Permitting rabid dog to run at large.—Any person, who knowingly and willfully allows any dog belonging to him, or over which he has control, and which is rabid, or which he has good reason to believe has been bitten by a rabid dog, to run at large within six months thereafter, must, on conviction, be fined not less than fifty, nor more than five hundred dollars.

Feb. 28, 1887, p. 95.

5358. Failure to sequester horse or other animal having glanders or other fatal disease.—Any person, having in his possession a horse or other animal afflicted with glanders or other fatal contagious or infectious disease, who fails to keep such diseased horse or other animal securely confined and away from all other animals, must, on conviction, be fined not less than five dollars nor more than fifty dollars; and is liable in a civil action for all damages sustained by any person by reason of such failure.

ARTICLE 11.

CONCERNING RAILROADS, STEAMBOATS, VESSELS AND PILOTS.

Feb. 14, 1893, p. 559, §5.

5359. Railroads employing persons who have not been examined and licensed.—Any person, or corporation, operating a railroad in this state, who employs any person as engineer, fireman, train-

*As amended by joint committee.

dispatcher, conductor, flagman, brakeman, or switchman, who has not been examined and licensed as provided by sections 3448, 3449 and 3450 of this Code, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars.

5360 (4098). **Throwing or shooting deadly missile into locomotive or car.**—Any person, who wantonly or maliciously throws or casts a missile, calculated to produce death or great bodily harm, or shoots at or into any locomotive or car of any railroad-train, in or on which there is any human being, or at or into any passenger-car forming part of a railroad-train, whether there is in or on such passenger-car any human being or not, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than twenty years.

Gilyard's case, 98 Ala. 59; Albritton's case, 94 Ala. 76.

5361 (4099). **Throwing or casting other missile into locomotive or car.**—Any person, who wantonly or maliciously throws or casts any missile, other than that mentioned in the preceding section, at or into any locomotive or car of any railroad-train, in or on which there is any human being, or at or into any passenger-car forming part of a railroad-train, whether there is in or on such passenger-car any human being or not, must, on conviction, be fined not more than one thousand dollars, and may also be sentenced to hard labor for the county for not more than two years.

5362 (4100). **Injuring or obstructing railroad bridge, trestle, etc., or salting track.**—Any person, who wantonly or maliciously injures any railroad, or any bridge, trestle, or culvert, cattle-guard, stock-gap, or other superstructure of such railroad, or places any impediment or obstruction on such railroad, or removes or destroys any portion thereof, in such manner as to render liable any engine, car, or other vehicle to diverge or to be thrown from the track thereof, or who salts the track of such railroad for the purpose of attracting cattle thereon, must, on conviction, be punished at the discretion of the jury, by death, or by imprisonment in the penitentiary for not less than ten years.*

Specific intent to injure railroad not necessary.—Clifton's case, 73 Ala. 473. See also Mitchell's case, 94 Ala. 68.

5363 (4101) (4238) (3680) (137). **Obstructing railroad maliciously, and throwing car from track, etc.**—Any person, who wantonly or maliciously injures any railroad, or places any impediment or obstruction thereon, by means of which injury, impediment, or obstruction any engine, car, or other vehicle diverges or is thrown from the track thereof, must, on conviction, be punished at the discretion of the jury, by death, or by imprisonment in the penitentiary for not less than ten years.*

5364 (4102). **Failure to comply with order of railroad commissioners to provide depot conveniences.**—Any person, or corporation, operating a railroad, which fails for more than ninety days after its Feb. 28, 1887, p. 74, §5.

*As amended by joint committee.

receipt, and for such further time, if any, as may be allowed by the railroad commissioners, to comply with a legal order of the railroad commissioners regarding the erection of a depot, or providing other conveniences for travelers at stations, must, on conviction, be fined not less than two hundred and fifty, nor more than five hundred dollars. To any indictment under this section it is a good defense that such order was, in view of all the circumstances, unreasonable or unjust.

Ib. **5365. Failure of railroad commissioners to notify solicitor and attorney-general of refusal to comply with such order.**—For failing to notify the proper solicitor and the attorney-general, or either, of the failure of any railroad company or person operating the railroad to comply with any order of the railroad commissioners regarding the erection of a depot or providing other conveniences for travelers at stations, within sixty days after the period within which such conveniences were required by such order to be erected, each member of the railroad commission must, on conviction, be fined not less than one hundred, nor more than two hundred dollars.

5366 (4103). **Violating chancery decree upon railroad commissioners' award.**—Any officer or agent of a person or corporation operating a railroad, who knowingly violates a chancery decree confirming railroad commissioners' award, regulating such railroad's business with any connecting line, must, on conviction, be fined not less than ten, nor more than five hundred dollars.

5367 (4104) (1703) (1405). **Failure of chief superintendent to instruct engineers and conductors.**—Any superintendent of a railroad, who fails to instruct the engineers and conductors thereof, as to the provisions of this Code in regard to blowing the whistle, ringing the bell, and stopping and handling the train, and order them to comply therewith, must, on conviction, be fined not less than one thousand dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months, at the discretion of the jury.

5368 (4105) (4258) (1416). **Railroads must keep lights and drinking-water; conductor punishable for neglect.**—Railroad companies must keep good lights on their night trains, and a sufficiency of good drinking-water on all trains; and every conductor, who runs any train without lights or water, as required by this section, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars.

5369 (4106) (4256) (1400). **Failing to ring bell and blow whistle on trains.**—Any engineer, or other person, having the control of the running of a locomotive on any railroad, who shall fail to perform any of the duties required of him by section 3440 (1144), must, on conviction, be fined not less than fifty, nor more than one thousand dollars, and imprisoned in the county jail for not more than twelve months, one or both, at the discretion of the jury.

5370 (4107). **Failure to stop at railroad crossings for passengers or freight.**—Any conductor, engineer, or other person, in charge of

any railroad-train passing within two hundred feet of a station of an intersecting railroad, located within two hundred yards of the intersection, who fails to stop such train opposite such station, take on or let off passengers, or their baggage, or to receive or deliver the freight of such station, on receipt of the usual charges for such passenger or freight transportation, must, on conviction, be fined not less than fifty, nor more than five hundred dollars.

5371 (4108) (4257) (1404). **Failing to stop at railroad crossing.** Any conductor, or any other person, in charge of any locomotive or train, who fails to cause it to come to a full stop within one hundred feet from the place at which one railroad crosses another, or, after such stop, allows such train to proceed before he knows the way to be clear, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months, one or both, at the discretion of the jury.

5372 (4109) (4234) (3677) (135). **Negligence of railroad conductors, etc.**—Any engineer, conductor, or other person, who, having the control or management of any steam-engine running on any railroad in this state, fails to use proper precautions to prevent accidents by ringing the bell, blowing the whistle, or checking the speed of his engine, on approaching any curve in the road, or any depot, station, or crossing of any public road, or on leaving any depot or station, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

5373 (4110) (4235) (3678) (136). **Endangering life by railroad accident.**—If, from the negligence, carelessness, or want of proper skill of any engineer or conductor having the control or management of any steam-engine running on any railroad in this state, or any brakeman, the engine or cars are thrown off the track, or any other accident occurs, and the life of any human being is thereby endangered, such engineer, conductor, or brakeman, must, on conviction, be fined not less than five hundred, nor more than two thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

5374 (4111) (4237) (3679). **Failing to attach bell-cord or other device for signaling engineer.**—Any conductor on any passenger-train on any railroad in this state, who fails at any time, when his train is in motion, to have a cord attached to the bell on the engine, and passing through each passenger-car, attached to his train, or the Westinghouse automatic whistle signal, or other similar device for signaling the engineer, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars; one half the fine to go to the informer, the other half to the state; and for such offense an indictment may be found and trial had in any county through which the road passes. Feb. 28, 1889, p. 94.

5375 (4112). **Wantonly or willfully injuring railroad fences.** Any person, who wantonly, willfully, or intentionally disturbs, breaks, throws down, or destroys any railroad fence, or any part thereof, must, on conviction, be fined not less than ten, nor more than five hundred dollars, or imprisoned in the county jail, or sentenced to hard labor for the county, for not less than ten days, nor more than twelve months.

Feb. 28, 1889, p. 808, §7.

5376. Section-master failing to notify owner of stock killed by railroad-train.—Any section-master on whose section any stock is killed or injured by any railroad train or locomotive, who knowingly fails to give notice thereof to the owner of such stock, within twenty-four hours after such killing or injury, is guilty of a misdemeanor.

Feb. 6, 1891, p. 412, §8.

5377. Passenger on railroad riding in coach not designated for his color.—Any person who, contrary to the provisions of the statute providing for equal and separate accommodations for the white and negro races on railroad passenger-trains, rides, or attempts to ride in a coach, or a division of a coach designated for the race to which he does not belong, must, on conviction, be fined not more than one hundred dollars.

Feb. 18, 1897, p. 1375.

5378. Detaching or uncoupling train, or putting on brakes by person not employed by or connected with railroad.—It shall be unlawful for any person not an employe or connected with any railroad company, to detach or uncouple any train, or put on any brake or brakes of any train, or otherwise interfere with same, while standing at any depot, crossing, or stop. Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, on conviction, shall be punished by fine and imprisonment, one or both, at the discretion of the court, not to exceed twenty-five dollars' fine, or thirty days in county jail.*

5379 (4113) (4231) (3674) (132). **Endangering life by bursting boiler of steamboat.**—If the captain of any steamboat used for the conveyance of passengers or freight, or any other officer or person having charge thereof, or the engineer having charge of the machinery, or of any part of the apparatus for the generation of steam, from gross negligence, or from ignorance, creates, or allows to be created, such an undue quantity of steam as to burst the boiler, or other apparatus in which such steam is generated, or any apparatus or machinery therewith connected, and human life is thereby endangered, such captain, engineer, or other officer, or person, must, on

*An act approved February 18, 1897 (Pamph. Acts, p. 1256), entitled "An act to prevent the jumping on or off trains while in motion, and to provide for the punishment thereof," is as follows:

"SECTION 1. *Be it enacted by the general assembly of Alabama*, That it shall be unlawful for any person who is not a passenger, or an intended passenger, employe, or agent of said railroad, or an officer of any city or town, or sheriff or his deputy, or such persons as go upon the train to act as escort to assist some person who has taken passage, to jump on or off any train while in motion.

"SEC. 2. *Be it further enacted*, That any person who violates the provisions of section 1 of this act, shall be guilty of a misdemeanor, and, on conviction, shall be punished by fine and imprisonment, either or both, at the discretion of the court, not to exceed twenty-five dollars' fine, and thirty days in county jail."

conviction, be imprisoned in the penitentiary for not less than two years. (Form 42.)

5380 (4114) (4232) (3675) (133). **Endangering life by steamboat-racing.**—Whenever any steamboat, while racing with another boat, or attempting to excel her in speed, bursts its boiler, or any apparatus or machinery therewith connected, and the life of any person is thereby endangered, the captain and engineer of such boat must each, on conviction, be imprisoned in the penitentiary for not less than two years.

5381 (4115) (4233) (3676) (134). **Endangering life by overloading vessel.**—Any person, navigating any boat or vessel for gain, who willfully receives on board thereof so many passengers, or such a quantity of freight, that by means thereof such boat or vessel sinks, or overturns, and the life of any human being is thereby endangered, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. (Form 43.)

5382 (4116) (4316) (3673) (131). **Loss of life or injury on steamboat from negligence, etc.**—Whenever any loss of human life, or any injury to any human being occurs on board of any steamboat navigating any of the waters of this state, from negligence or want of skill on the part of the captain, engineer, or other officer or person engaged in the management of such boat, or any part of the machinery thereof, the officer or person from whose negligence or want of skill such loss of life or injury occurred, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than ten years.

5383 (4117) (4260) (1158) (928). **Piloting without license.**—Any person, who acts as pilot in the bay or harbor of Mobile, without a license from the commissioners of pilotage, or after he knows that they have revoked his license, must, on conviction, be fined not less than one hundred dollars.

ARTICLE 12.

CONCERNING PUBLIC STREETS, ROADS AND WATERCOURSES.

5384 (4118) (4248) (1360) (1175). **Streets of town out of order for more than ten days; penalty.**—In all towns or cities incorporated under any law of this state, if the inhabitants are exempt from working on the public roads within the limits thereof, and any of the streets therein are out of repair for more than ten days at any one time, without a reasonable excuse therefor, to be determined by the court, the corporate officers of such town, or any one or more of them are guilty of a misdemeanor. (Form 85.)

Nowlin's case, 49 Ala. 41.

5385 (4119) (4245) (1398) (1204). **Failure of corporation, etc., to keep road or bridge in good order.**—If any corporation or person, authorized by any law of the state to charge toll on any turnpike, plank, or macadamized road, watercourse, or bridge, allows the same to be out of the repair or order contemplated by its charter or such law, for ten days at any one time, without a sufficient excuse, to be determined by the court, the president and directors of such corporation, or the person so authorized, are guilty of a misdemeanor; and on the trial, proof that such road, bridge, or watercourse has been out of such order for ten days at any one time, and that such corporation or person, or any one on the part thereof, charged toll for such road, bridge, or watercourse, and that such president and directors act, or claim to act in that capacity, is presumptive evidence of the existence of such corporation, of a charter or law authorizing toll to be charged, and that the persons so acting, or claiming to act, are the president and directors of such corporation.

5386 (4120) (4246) (1396) (1203). **Permitting bridge to remain out of repair.**—When a bridge or causeway has been erected by contract with the county commissioners, with a guarantee by bond or otherwise, that it shall continue safe for the passage of travelers and other persons for a stipulated time, and the contractor knowingly suffers any such bridge or causeway to remain out of repair and unsafe for the passage of travelers and other persons for more than ten days at any one time, during the period stipulated for its safety by the terms of his contract, must, on conviction, be fined for the use of the county in a sum not less than double the value of the materials and labor necessary to put such bridge or causeway in the state of safety required by the terms of his contract.

5387 (4121) (4247) (1343). **Neglecting or obstructing fords.** Any overseer of roads, who fails to keep open and in good condition the existing fords of watercourses at crossings where toll-bridges on public roads are constructed, and the land entrance thereto on either side, or any person who places obstructions in such fords, or in any manner intentionally interferes with travel through such fords, on conviction, is subject to such penalties as are imposed by law upon defaulting overseers of public roads.

5388 (4122) (4249) (1361) (1176). **Changing, obstructing and injuring public roads.**—To change a public road, except by order of the court of county commissioners, founded on a report of viewers appointed by the court, unless it straightens the same through inclosures, or renders it more convenient for the public; to obstruct a public road by a fence, bar, or other impediment, except by gates erected across the same by leave of the court of county commissioners, obtained as provided by law; to cut or place a tree, brush, or other obstacle across or along a public road, so as to impede travel, and not remove the same within six hours; willfully to deface, injure, or destroy any mile-post, index-board, bridge, or causeway; or willfully to injure or obstruct any public road in any way, is a misdemeanor. (Form 66.)

When road can be lawfully changed.—James v. Hendree, 34 Ala. 488. When not indictable for straightening and rendering road more convenient.—Ib.; McDade's case, 95 Ala. 28. Failure to repair bridge not indictable under this section as "an obstruction of public road."—Malone's case, 51 Ala. 55. Obstruction caused by mill-dam must be willfully done.—Prim's case, 36 Ala. 244. Sufficiency of indictment.—Thompson's case, 20 Ala. 54; Johnson's case, 32 Ala. 583. What no defense to obstructing road opened by an overseer de facto. Thompson's case, 21 Ala. 48. Obstructing by railroad train.—Gude's case, 76 Ala. 100. Statute protects private guide-board which overseers have allowed to remain.—Pullum's case, 88 Ala. 100.

5389 (4123) (4250) (1366) (1178). **Overseers permitting obstructions to remain on public roads; when hands defaulters.**—Any overseer, permitting a fallen tree, dead animal, or such quantity of brushwood as obstructs travel to remain in or across a public road for three days after notice thereof, without a good excuse, to be determined by the court, is guilty of a misdemeanor; and all hands warned by such overseer for the purpose of removing such tree or brushwood are bound to attend, notwithstanding they may have worked ten days; and, failing so to do, must be proceeded against by such overseer as other defaulters.

5390 (4124) (4251) (1367) (1179). **Failure to open new road or neglect to repair.**—Any overseer, who fails to open any new road which he has been appointed to open, or allows his precinct, or any part of the same, to be out of repair more than ten days at any one time, without good excuse, to be determined by the court, is guilty of a misdemeanor.

5391 (4125) (4252) (1371) (1183). **Neglect of duties imposed as to public roads.**—Any apportioner, or other officer, on whom any duty is imposed as to public roads, who neglects to perform the same, in case no other provision has been made for the punishment of such neglect, is guilty of a misdemeanor.

Appointment of person under twenty-one as road overseer not void; but his minority is personal exemption which he may claim or waive.—Allison's case, 60 Ala. 54. Regularly appointed overseer can only relieve himself by excuse or resignation, as prescribed by statute.—Ib. 54. Sufficiency of indictment.—Malone's case, 51 Ala. 55; McCullough's case, 63 Ala. 75. Overseer neglecting to repair for ten days; what an excuse.—McCullough's case, 63 Ala. 75. Apportioners of roads not required to report overseer to grand jury unless overseer has neglected his duty.—Williams's case, 45 Ala. 55.

5392 (4126) (4253). **Failure to work on public road after legal notice.**—Any person, liable to road duty, who willfully fails or refuses, after legal notice, to work the public roads, either in person or by substitute, without a sufficient excuse therefor, must, on conviction, be fined not less than one dollar, nor more than three dollars, for each day for which he is so in default, and may also be imprisoned in the county jail, or put to hard labor for the county, for not more than twenty days.

Sufficiency of complaint and warrant.—Brown's case, 63 Ala. 97. Provision in charter of corporation exempting its employes from road duty is constitutional and valid.—Johnston's case, 91 Ala. 70; s. c., 88 Ala. 176; Lewin's case, 77 Ala. 45. Defendant who has confessed judgment with surety under contract to labor for such surety is not subject to road duty during the time covered by the contract.—Ward's case, 88 Ala. 202. Defendant claiming exemption on ground of being an employe of Alabama Insane Hospital, must show he was such employe at time alleged he was liable to road duty.—Lewin's case, 77 Ala. 45.

5393 (4127) (4174) (1332) (1150). **Failure of judge of probate as to duty concerning public roads.**—Any judge of probate, who fails, on the establishment of a new road, the division of the same into precincts, and the appointment of the overseers therefor, to issue to such overseers an order directing the opening thereof, or who fails, for ten days after the appointment of overseers and apportioners, to furnish the sheriff with a copy of the order of appointments, or to furnish the sheriff with a statement signed by him of the overseer on any road precinct within their election precincts, and a description of such road precincts, with the names and grades of the road assigned to such overseer, or to furnish the sheriff with a statement of the names of the apportioners of the election precinct or precincts through which any part of the road passes, as required by law, must, on conviction, be fined not less than twenty dollars.

5394 (4128). **Failing to keep in repair, and to keep closed gates erected across public roads.**—Any person, who, having erected a gate across a public road by authority of the court of county commissioners, or board of county revenue, or by authority of any act of the general assembly, or any person who succeeds such person in the ownership, control, or possession of such gate, or in the benefits to be derived therefrom, or whose duty it is to keep the same in repair, fails for three or more days to keep such gate in good repair, or any person who leaves open such a gate, must, on conviction, be fined not more than twenty dollars.

5395 (4129) (4810) (1369) (1181). **Indictment and proof against overseer or apportioner.**—In an indictment against an overseer or apportioner of a public road, it is sufficient to charge in general terms, that the defendant has failed to discharge his duties as such apportioner or overseer; and the acts or omissions constituting his neglect of duty may be proved on the trial, as well as the excuse therefor, in such cases as excuses are allowed. (Forms 75, 76.)

See notes to sections 5391 and 5392.

5396 (4130) (1645) (1337) (1155). **Refusal of overseer to act after resignation not accepted.**—If the judge of probate and county commissioners shall consider insufficient any excuse made by any person appointed overseer of public roads for not accepting the appointment, or shall refuse to accept his resignation of the appointment, and such person thereafter neglects or refuses to act under such appointment, he must, on conviction, be fined not less than twenty, nor more than fifty dollars.

5397 (4131) (4903) (1373) (1185). **Compensation of apportioner presenting overseer.**—Any apportioner appointed to attend court to prosecute an overseer, who attends for such purpose, is entitled to four cents a mile and two dollars a day, to be taxed in the bill of costs if the defendant is convicted; or on failure to find a bill, or to convict, or if the defendant proves insolvent, to be paid out of the county treasury on the certificate of the clerk.

5398 (4132) (4901) (1370) (1182). **Evidence on trial of overseer for neglect of duty.**—On the trial of any person for neglect of duty

as overseer, the return of his appointment by the sheriff, or proof of such service in case of its loss, and the acts or admissions of such person to that effect are evidence of his being overseer; that the road is a public road may be proved by his acts and admissions, and by the use of it as such; and no proof is required, on the part of the state, except that such person was overseer of the road at the time of the default, and that such road was a public road, and proof of the default.

5399 (4133) (4902) (1372) (1184). **Order recognizing road is evidence.**—Any order of the court of county commissioners, by which a road is recognized as a public road, is presumptive evidence thereof.

5400 (4134) (4259) (1747). **Failure to keep principal office of turnpike in proper county.**—If the president and directors or managers of any plank, macadamized, or turnpike road company shall fail to hold meetings and keep the principal office for the transaction of the business of such company in the county in which the principal portion of such plank or turnpike road may lie, or at one or the other termini of such road, they shall each be liable to indictment for a misdemeanor, and, on conviction, shall be fined for every such offense fifty dollars; and all acts of the company in violation of the provisions of this section are null and void.

5401 (4135) (4255). **Obstructing streams used for floating timber to market.**—Any person, who, during the season of high waters, leaves, or causes to be left, in any of the streams of this state used for floating timber to market, saw logs, or hewn or square timber, which he has put, or caused to be put, into such stream, so massed or collected together as to obstruct such stream, and who does not use diligence to effect a removal of such obstructions, must, on conviction, be fined not less than twenty-five, nor more than two hundred and fifty dollars.

5402 (4136) (4254). **Obstructing navigable watercourse.**—Any person, who dams up or otherwise obstructs a navigable watercourse, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars. Feb. 28, 1887, p. 132 §2.

Olive's case, 86 Ala. 88.

5403. Floating logs, timber, or lumber upon watercourse without sufficient force to prevent obstruction.—Any person, who floats any logs, timber, or lumber upon any navigable watercourse, without accompanying the same with sufficient force to prevent the obstruction of such watercourse so as to hinder the removal of any logs, timber, or lumber from the banks or shores thereof, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars. Ib. §1.

Olive's case, 86 Ala. 88.

5404. Turning logs, timber, or lumber out of boom without notice to owner.—Any person, owning or controlling any boom in any navigable watercourse, who turns adrift any logs, timber, or lumber caught in such boom, without giving the owner of such logs, timber, Ib. §3

or lumber five days' notice of his intention to do so, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars.

Ib. §3. **5405. Opening or cutting loose boom without authority.**—Any person, who opens the boom of another for any purpose without his permission, or willfully cuts, unties, loosens or casts off any rope, chain, pole, timber, pile, or other fastening by which a boom containing any logs, timber, or lumber is secured, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars.

5406 (4137). **Mobile harbor; fastening rafts and obstructing ship-channel in Mobile bay.**—Any person, who makes any vessel, boat, or water-craft of any description, or any raft or collection of logs, lumber, or timber, fast to any beacon or light stake or piling which may be of any use or benefit in making use of the dredged channel in the bay of Mobile, is liable to indictment in the city court of Mobile, or circuit court of Mobile county, or any other court of competent jurisdiction, and must, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

5407 (4138). **Same; injuring ship-channel, beacon-light, etc.** Any person, who knowingly or willfully causes, or is concerned in causing, any damage or injury to any part of the dredged channel, as it now exists, or may hereafter exist, at any point or points between the upper or northern limits of the port of Mobile and the lower part of the bay of Mobile, or to any beacon-light, stake, piling, or other matter, or thing, which is or may be used, or intended to be used, in connection with such dredged channel for the better navigation of the same, is liable to indictment in the city court of Mobile, or the circuit court of Mobile county, or any other court of competent jurisdiction, and, on conviction, must be fined not more than ten thousand dollars, and may also be imprisoned in the penitentiary for not more than twenty years.

5408 (4139). **Same; master of vessel drawing more than twelve feet passing channel without permit, etc.**—Any master or person in charge of any vessel drawing more than twelve feet of water, which may enter into the dredged channel between the upper limits of the port of Mobile and the outer bar of the bay or harbor of Mobile, without a permit from the harbor-master, or in violation of the rules and regulations of the commissioners of pilotage of the port and harbor of Mobile, is liable to indictment in the city court of Mobile, or circuit court of Mobile county, or any other court of competent jurisdiction, and must, on conviction, be fined not more than ten thousand dollars, and may also be imprisoned in the penitentiary for not more than ten years.

ARTICLE 13.

CONCERNING MINES AND MINING.

5409. Willful or negligent violation of law and rules pertaining to mining.—Any person, who willfully and intentionally injures any shaft, safety-lamp, instrument, air-course or brattice, or obstructs or throws open any airway in any coal or ore mine; or carries matches, or a pipe or other smoker's article beyond any station inside of which locked safety-lamps are used in such mine; or injures any part of the machinery therein, or opens a door therein and fails to immediately close the same, or opens any doorway therein, the opening of which is forbidden by the inspector of mines; or uses in such mine any oil in a lamp not known to be of the best quality of miners' oil; or does any act whereby the life or health of any person or the security of the mine or machinery is endangered; or neglects or refuses to perform any of the duties required of him by the provisions of chapter 78 of this Code, or violates any of the provisions thereof; or who pulls down, injures or defaces any posted abstract of the law or rules and regulations pertaining to mining, must, on conviction, be fined not more than two hundred and fifty dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. Feb. 18, 1895, p. 1230, §§21, 26.

5410. Mine-operator failing to have ore or coal accurately and correctly weighed.—Any person or corporation operating any ore or coal mine in which miners or other laborers are employed to mine or cut ore or coal for a compensation to be determined by the weight of the ore or coal mined or cut, who fails to weigh, or cause to be weighed, accurately and correctly, any ore or coal so mined or cut by such miners or laborers, must, on conviction, be fined for each offense not less than ten dollars nor more than one hundred dollars. Dec. 17, 1894, p. 245, §§1, 3.

5411. Mine owner or operator refusing to permit inspection of mine by adjacent owner.—Any owner, operator, or manager of any coal or ore mine who refuses to permit an adjacent owner or lessee of land, or a competent engineer selected by him, to enter and inspect such mine for the purpose of ascertaining whether the same is being so worked as to encroach upon the land of such adjacent owner or lessee, must, on conviction, be fined not more than one hundred dollars. Feb. 28, 1893, p. 331, §§1, 2.

CHAPTER 183.

PUNISHMENTS.

ARTICLE 1.—LEGAL PUNISHMENTS SPECIFIED. 5412, 5413.
2.—OFFENSES NOT SPECIALLY PROVIDED FOR. 5414.
3.—PUNISHMENT FIXED BY THE COURT. 5415–5419.
4.—PUNISHMENT DETERMINED BY THE JURY. 5420, 5421.
5.—CONFESSION OF JUDGMENT, AND IMPRISONMENT OR HARD LABOR FOR FAILURE TO PAY FINE AND COSTS. 5422–5426.
6.—EFFECT OF SENTENCE. 5427–5429.
7.—EXECUTION OF SENTENCE OF DEATH. 5430–5443.

ARTICLE 1.

LEGAL PUNISHMENTS SPECIFIED.

5412 (4492) (4450) (3755) (208). **Legal punishments specified; when court may sentence to hard labor.**—The only legal punishments, besides removal from office and disqualification to hold office, are fines, hard labor for the county, imprisonment in the county jail, imprisonment in the penitentiary, which includes hard labor for the state, and death by hanging. And in all cases in which the period of imprisonment in the penitentiary, or hard labor for the county, is more than two years, the judge must sentence the party to imprisonment in the penitentiary; and in all cases of conviction for felonies, in which such imprisonment or hard labor is for more than twelve months, and not more than two years, the judge may sentence the party to imprisonment in the penitentiary, or confinement in the county jail, or to hard labor for the county, at his discretion, any other section of this Code to the contrary notwithstanding; and in all cases in which the imprisonment or sentence to hard labor is twelve months, or less, the party must be sentenced to imprisonment in the county jail, or to hard labor for the county.

This section is construed to amend and control other sections of this Code prescribing place of punishment, so far as they are in conflict with it; hence, **in all cases, if sentence be for more than two years, it must be to the penitentiary**; if for **more than one year and not more than two,** it may, **in the discretion of the judge,** be either to the penitentiary, or hard labor for the county, or the county jail; if for **one year or less, it must be to hard labor** for the county, or to the county jail.—Ex parte Thomas, 113 Ala. 1; Evans's case, 109 Ala. 11; Ex parte Brown, 102 Ala. 179; Ex parte Goucher, 103 Ala. 305; Henderson's case, 98 Ala. 35; Zaner's case, 90 Ala. 651; Herrington's case, 87 Ala. 1; Gunter's case, 83 Ala. 96; Hobbs's case, 75 Ala. 1; Steele's case, 61 Ala. 213. On plea of guilty to charge of **embezzlement, sentence to one year in the penitentiary erroneous.**—Herrington's case, 87 Ala. 1; in such case the sentence will be reversed back to conviction and the cause remanded for proper sentence.—Ib. On conviction for **manslaughter in first degree,** the jury have no authority to prescribe one year in the penitentiary; if sentence passed in pursuance of such verdict, the judgment of conviction will be reversed on appeal.—Zaner's case, 90 Ala. 651 (distinguishing Herrington's case, supra). Or defendant discharged on habeas corpus.—Ex parte Brown, 102 Ala. 179. The court should not receive such a verdict until corrected.—Ib.; Ex parte

Goucher, 103 Ala. 305. If received, but disregarded as to place of punishment, and defendant sentenced to hard labor for the county for one year, he will not be discharged on habeas corpus.—Ex parte Goucher, 103 Ala. 305. The **discretion of the jury is exhausted in fixing the time** or number of years the punishment is to continue, the law fixing the place or, within the limits here fixed, leaving to the discretion of the judge.—Evans's case, 109 Ala. 11. Hence a verdict in manslaughter, fixing punishment at fifteen months in the penitentiary, will support sentence to hard labor for the county for that term.—Ib. And additional term for costs.—Ib. The punishment being fixed by the jury at two years, the court has authority to sentence to hard labor for the county for that period.—Henderson's case, 98 Ala. 35. For **grand larceny**, the time being fixed at one year, defendant properly sentenced to hard labor for the county for that period.—Ex parte Thomas, 113 Ala. 1. And additional term for costs.—Ib. For **forgery** in second degree, two years having been fixed upon, the court may sentence to penitentiary, or to hard labor for the county; and, to latter sentence, may add sentence for costs.—Hobbs's case, 75 Ala. 1. Sentence to hard labor in penitentiary is, in substance and legal effect, a sentence to imprisonment in the penitentiary.—Brown's case, 74 Ala. 478. Verdict fixing punishment at "thirty months hard labor" authorizes and requires sentence to penitentiary for that period.—Gunter's case, 83 Ala. 96. Sentence to longer or shorter term than allowed by law, is void.—Brown's case, 47 Ala. 47: Ex parte Brown, 102 Ala. 179. Verdict fixing penalty at "imprisonment for life" will support sentence to penitentiary for life.—McGuff's case, 88 Ala. 147. As to sentence for costs, see note to section 5426.

5413 (4493) (4451) (3756) (209). **Benefit of clergy.**—There is no benefit of clergy in this state.

ARTICLE 2.

OFFENSES NOT SPECIALLY PROVIDED FOR.

5414 (4192) (4447) (3754) (207). **Misdemeanor for which no special punishment has been provided.**—Any person, who commits a public offense, which is a misdemeanor at common law, or by statute, and the punishment of which is not particularly specified in this Code, must, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

See Redman's case, 33 Ala. 428.

ARTICLE 3.

PUNISHMENT FIXED BY THE COURT.

5415 (4494) (4484, 4506) (3782, 3806) (258). **Punishment; when fixed by the court.**—When an offense is punishable by imprisonment in the penitentiary, or hard labor for the county, the court must impose the term of punishment, unless the power is expressly conferred on the jury.

When law requires court to fix punishment, error to leave it to jury. Leoni's case, 44 Ala. 110. Verdict of guilty merely does not authorize court to fix a fine.—Melton's case, 45 Ala. 56. Verdict of guilty where the fine is fixed by statute.—McPherson's case, 54 Ala. 221. Does not authorize court to impose fine.—Melton's case, 45 Ala. 56. When court imposes punishment on plea of guilty of misdemeanor.—Drake's case, 60 Ala. 42. When jury imposes

fine and court imposes punishment.—Bibb's case, 83 Ala. 84; Leonard's case, 96 Ala. 108; Taylor's case, Ala. (21 So. 947). See also note to section 5412.

5416 (4495) (4507) (3807) (259). **Imprisonment; may be for life, if no limit prescribed.**—When no maximum limit to the duration of the imprisonment is prescribed by law, the court may, in its discretion, sentence the offender to imprisonment for the term of his natural life.

5417 (4496) (4509, 4510) (3809, 3810) (261, 262). **Sentence on second conviction for same offense.**—On a second conviction of the same offense committed after the convict has served out his term of punishment on the former conviction, or has been pardoned, he must be sentenced to a longer term than before, by at least one-fourth of the former term, unless that exceeds the longest term prescribed by law; and the provisions of this section apply where the first conviction was in another state.

5418 (4497) (4483) (3781) (234). **Shortest term of labor ten days.**—Punishment by hard labor for the county shall never be for a less period than ten days.

5419 (4498) (4485) (3783) (235). **Imprisonment in county jail; by whom imposed.**—When an offense is punishable by imprisonment in the county jail, such imprisonment must be imposed by the court, unless the discretion is expressly conferred on the jury.

Power to imprison in petit larceny vested in judge, not in jury.—Moss's case, 42 Ala. 546. Also, in case of libel, may add imprisonment to fine.—Reid's case, 53 Ala. 402. Court may fix measure of punishment where a fine is imposed by jury in petit larceny.—Lacey's case, 58 Ala. 385. And for keeping gaming-table.—Bibb's case, 83 Ala. 84. And for arson in third degree.—Leonard's case, 96 Ala. 108. See also note to section 5412.

ARTICLE 4.

PUNISHMENT DETERMINED BY THE JURY.

5420 (4499) (4452) (3757) (210). **Fines assessed by jury; how remitted or reduced.**—In prosecution by indictment, the jury shall fix and determine the amount of the fine; and no judge shall remit or reduce the fine so fixed, unless he spreads his reasons for so doing in full on the minutes of his court.

Fine must be imposed by jury, on plea of guilty of assault with pistol, under indictment for assault to murder.—Melton's case, 45 Ala. 56; Nelson's case, 46 Ala. 186. Also for retailing without license.—McPherson's case, 54 Ala. 221. Fines must be imposed by jury.—Spicer's case, 105 Ala. 123; Leonard's case, 96 Ala. 108; Golson's case, 86 Ala. 601; Bibb's case, 83 Ala. 84; Taylor's case, Ala. (21 So. 947).

5421 (4500) (4453) (3758) (211). **When jury need not impose fine, but leave punishment to court.**—When an offense may be punished, in addition to a fine, by imprisonment or hard labor for the county, the jury shall not be required to impose a fine, if, in their judgment, the defendant should only be punished in some other mode, but may, in such case, only find him guilty, and leave the imposition of the punishment to the court.

Verdict of guilty, where a fine is fixed by law, as in revenue cases, will authorize sentence of imprisonment.—McPherson's case, 54 Ala. 221. But a verdict of guilty merely will not authorize court to impose a fine.—Melton's case, 45 Ala. 56; Spicer's case, 105 Ala. 123; Nelson's case, 46 Ala. 186. Verdict of guilty, imposing fine and attempting to impose hard labor, good as to fine, the rest being surplusage.—Taylor's case, Ala. (21 So. 947).

ARTICLE 5.

CONFESSION OF JUDGMENT, AND IMPRISONMENT OR HARD LABOR FOR FAILURE TO PAY FINE AND COSTS.

5422 (4501) (4457) (3762) (215). **Prosecutor taxed with costs may confess judgment; else imprisoned ten days.**—When the costs are imposed on the prosecutor, he may confess judgment for the same, with good and sufficient sureties; and, failing to do so, or to pay the same presently, must be imprisoned in the county jail, or sentenced to hard labor for the county, for ten days.

5423 (4502) (4454) (3759) (212). **Confession of judgment by defendant for fine and costs.**—When a fine is assessed, the court may allow the defendant to confess judgment, with good and sufficient sureties, for the fine and costs.

Confession of judgment release of error, when.—Hearn's case, 62 Ala. 218. Where several are jointly indicted and convicted, separate judgments rendered against each.—McLeod's case, 35 Ala. 395. For fine and forfeiture against wife, husband must be party to judgment and equally amenable, etc.—Rather's case, 1 Port. 137, 138. On appeal in misdemeanors, prisoner released on confessing judgment; vacated by reversal.—Burke's case, 71 Ala. 377. As to sureties, confession of judgment a civil liability.—State v. Allen, 71 Ala. 543; Hearn's case, 62 Ala. 218. But as to the principal, property not exempt from execution, etc.—State v. Allen, supra. Presumption of waiver of exemption as to sureties, etc.—Hearn's case, supra. It is not error for court to refuse to limit costs to those incurred by the state; the judgment ipso facto does that on a confession.—Yeldell's case, 100 Ala. 26. Court may refuse to accept defendant's confession alone for costs; the law requires sureties.—Bowen's case, 98 Ala. 83.

5424 (4534) (4456) (3761) (214). **Execution issues as in civil cases.**—Execution may issue for the fine and costs, or any portion thereof, remaining unpaid, as in civil cases.

5425 (4503) (4455) (3760) (213). **On default in payment of fine and costs, imprisonment or hard labor imposed.**—If the fine and costs are not paid, or a judgment confessed according to the provisions of the preceding section, the defendant must either be imprisoned in the county jail, or, at the discretion of the court, sentenced to hard labor for the county as follows: If the fine does not exceed twenty dollars, ten days; if it exceeds twenty, and does not exceed fifty dollars, twenty days; if it exceeds fifty, and does not exceed one hundred dollars, thirty days; if it exceeds one hundred, and does not exceed one hundred and fifty dollars, fifty days; if it exceeds one hundred and fifty, and does not exceed two hundred dollars, seventy days; if it exceeds two hundred, and does not exceed three hundred dollars, ninety days; and for every additional one hundred dollars, or fractional part thereof, twenty-five days.

This statute not unconstitutional; costs do not constitute a debt within its meaning.—Morgan's case, 47 Ala. 34; Caldwell's case, 55 Ala. 133; McDowell's case, 61 Ala. 176. See Nelson's case, 46 Ala. 186. And imprisonment imposed for costs, although fine is paid.—Nelson's case, 46 Ala. 186. This statute provides for fixing term of hard labor according to fine, while the next section regulates the term for the unpaid costs.—Williams's case, 55 Ala. 166. When fine of fifty dollars only punishment imposed, statutory limit of hard labor is twenty days.—Burch's case, 55 Ala. 136. See Burke's case, 71 Ala. 379; s. c., 74 Ala. 399; Giddens v. Crenshaw Co., 74 Ala. 471.

Feb. 18, 1895, p. 849, §98.

5426 (4504) (4731) (4061) (511). **When additional hard labor imposed for costs; rules in reference to.**—If, on conviction, judgment is rendered against the accused that he perform hard labor for the county, and if the costs are not presently paid, or judgment confessed therefor, as provided by law, then the court may impose additional hard labor for the county for such period, not to exceed ten months, as may be sufficient to pay the costs, at the rate of thirty cents per day, and the court must determine the time required to work out such costs at that rate; and such convict must be discharged from the sentence against him for costs on the payment thereof, or any balance due thereon, by the hire of such convict, or otherwise; and the certificate of the judge or clerk of the court in which the conviction was had, that the costs, or the residue thereof, after deducting the amount realized from the hire of the convict, have been paid, or that the hire or labor of the convict, as the case may be, amounts to a sum sufficient to pay the costs, shall be sufficient evidence to authorize such discharge.

Not imprisonment for debt.—Bailey's case, 87 Ala. 44; Caldwell's case, 55 Ala. 133; Morgan's case, 47 Ala. 34. Section regulates term for unpaid costs. Williams's case, 55 Ala. 166. Does not authorize sentence for costs incurred by defendant in making his defense, nor fees due to his witnesses.—Yeldell's case, 100 Ala. 26; Bowen's case, 98 Ala. 83; Bradley's case, 69 Ala. 318. Apportionment of costs on joint conviction.—Dawson v. Sayre, 80 Ala. 444; Coleman's case, 55 Ala. 173. Judgment should specify amount, number of days, and sum allowed for each day.—Evans's case, 109 Ala. 11; Tolbert's case, 87 Ala. 27; Gady's case, 83 Ala. 51; Armstrong's case, Ib. 49; Hill's case, 78 Ala. 1; Walker's case, 58 Ala. 393. Not reversible error, however, to fail in this.—Tolbert's case, 87 Ala. 27; Hill's case, 78 Ala. 1; Walker's case, 58 Ala. 393. Erroneous sentence for costs will be corrected and affirmed on appeal.—Johnson's case, 94 Ala. 35; Vaughan's case, 83 Ala. 55; Miller's case, 77 Ala. 41; Bradley's case, 69 Ala. 318. Fine being paid, prisoner may be sentenced to hard labor for the costs.—Ex parte Joice, 88 Ala. 128. Prisoner not entitled to discharge on payment of amount he would earn during term of sentence; he must pay entire amount taxable against him.—Pierce's case, 89 Ala. 177. Judgment cannot be pronounced piecemeal; cannot be amended at subsequent term by adding hard labor for costs.—Newton's case, 94 Ala. 431.

ARTICLE 6.

EFFECT OF SENTENCE.

5427 (4505) (4511) (3811) (263). **Sentence to penitentiary terminates right of executor, administrator, or guardian.**—A sentence of imprisonment in the penitentiary, imprisonment in the county jail, or hard labor for the county, for a term of twelve months, or more, terminates the right of the convict to execute the office of executor, administrator, or guardian, in the same manner as if he

had been removed from office, and extinguishes all private trusts not susceptible of delegation by him.

5428 (4506) (4512) (3812) (264). **Effect of sentence of imprisonment for life.**—A convict sentenced to imprisonment for life is regarded as civilly dead, but may, nevertheless, at any time within six months after his sentence, make and publish his last will and testament.

5429 (4507) (151) (146) (107). **Sentence of officer to penitentiary vacates office; restored on reversal, but not if pardoned.** When any person, holding any office or place under the authority of this state, is sentenced by any court of the United States, of this state, or any other state, to imprisonment in the penitentiary, his office or place is vacated from the time of the sentence; and if the judgment is reversed, he must be restored; but if pardoned, he must not.

Ex parte Diggs, 50 Ala. 78.

ARTICLE 7.

EXECUTION OF SENTENCE OF DEATH.

5430 (4665) (4615) (3917) (369). **When sentence of death executed.**—Whenever any person is sentenced to the punishment of death, the court must direct that he be hanged by the neck until he is dead; and such sentence must be executed by the proper executive officer of the law, on such day as the court may appoint, not less than four, nor more than eight weeks from the time of the sentence, unless such court suspends the execution, on account of the reference of some matter of law arising on the trial for the determination of the supreme court.

5431 (4666) (4616) (3918) (370). **By whom executed.**—The sentence of courts, directing the execution of a person according to the provisions of the preceding section, must be executed by the sheriff or his deputy, or by the officer acting in his place.

5432 (4667) (4617) (3919) (371). **Where executed.**—The punishment of death must be inflicted either in the prison where the convict is confined, or in some other building or inclosure, which must be closed from public view; and no person shall be permitted to be present or witness such punishment, except those who are specially permitted to do so by law.

Rains's case, 88 Ala. 91, 100; Liles's case, 30 Ala. 24.

5433 (4668) (4618) (3920) (372). **Notice; officers and physicians may be present.**—Such officer must give at least three days' previous notice to the judge of the probate court, the clerk of the circuit or city court, at least three justices of the peace, if there be so many in the county, and the physicians in the neighborhood, who may be present and witness the execution; and the persons thus at-

tending must make out and sign a certificate in writing, declaring that they witnessed the execution of the convict pursuant to his sentence.

5434 (4669) (4619) (3921) (373). **Who else allowed to be present.**—Such officer must also permit the counsel of the convict, and such ministers of the gospel as he may desire, and his relations, to be present; and also such officers of the prison, deputies, constables, military guard, and other assistants, as he may think proper.

5435 (4670) (4620) (3922) (374). **Pregnancy of female convict; jury summoned.**—If there is reason to believe that a female convict is pregnant, the sheriff must, with the concurrence of a judge of the circuit or city court, summon a jury of six disinterested persons, as many of whom must be physicians as practicable.

5436 (4671) (4621) (3923) (375). **Same; fact determined by jury; notice to solicitor.**—The sheriff must also give notice to the solicitor, or, in his absence, to any attorney who may be appointed by a circuit or city judge to represent the state, and who has authority to issue subpœnas for witnesses; and the jury, under the direction of the sheriff, or officer acting in his place, must proceed to ascertain the fact of pregnancy; and must state their conclusion in writing, signed by them and the sheriff.

5437 (4672) (4622) (3924) (376). **Same; if with child, sentence suspended and finding transmitted to governor.**—If such jury are of opinion, and so find, that the convict is with child, the sheriff, or officer acting in his place, must suspend the execution of the sentence, and transmit the finding of the jury to the governor.

5438 (4673) (4623) (3925) (377). **Same; when not with child, governor issues warrant, and sentence executed.**—Whenever the governor is satisfied that such convict is no longer with child, he must issue his warrant to the sheriff appointing a day for her to be executed according to her sentence; and the sheriff, or other officer, must execute the sentence of the law on the day so appointed.

5439 (4674) (4624) (3926) (378). **When convict sentenced, but not executed on day fixed.**—When, from any cause, any convict sentenced to death has not been executed pursuant to such sentence, the same stands in full force, and the circuit or city court of the county in which such convict was tried, on the application of the solicitor of the circuit, must direct the convict to be brought before it, or, if necessary, must issue an order in writing to that effect; and, upon such convict being brought before such court, it must inquire into the circumstances, and, if no legal reason exists against the execution of such sentence, must sentence the convict to execution on a day to be by such court appointed.

5440 (4675) (4625) (3927) (379). **Same; apprehension and commitment of.**—If such convict is at large, any magistrate may issue a warrant for his apprehension; and, if no good reason is shown for his discharge, must commit him, that he be forthcoming to abide the order and sentence of the court in which he was tried.

5441 (4676). **When sheriff may order out troops at execution of criminal.**—No sheriff shall order out, or put on duty, at the execution of any criminal, any company, or portion of state troops, except when a riot, attempt at rescue, or other outbreak, has actually occurred, which the posse comitatus is powerless to subdue, or unless there is reasonable cause to apprehend a riot, attempt at rescue, or other outbreak, which the posse comitatus cannot subdue or control.

5442 (4677). **When sheriff guilty of misdemeanor in ordering out troops.**—Any sheriff, calling out, or putting on duty any company, or portion of state troops, in violation of the last preceding section, or who calls out, or puts on duty any portion of the state troops, although there be proper cause therefor, without first applying to the governor and obtaining his instructions in the premises, if there is time and opportunity beforehand to make such application and receive the governor's instructions, must, on conviction, be fined not less than five hundred, nor more than one thousand dollars.

5443 (4678). **Failure of sheriff to report to governor in such case, a misdemeanor.**—In every case when state troops are ordered out, or put on duty by the sheriff on the occasion of the execution of any criminal, without first obtaining the instructions of the governor, it shall be the duty of the sheriff forthwith to notify the governor of the reasons for his action, and, within ten days thereafter, to make a written report, under oath, to the governor, setting forth the facts and circumstances necessitating the ordering out of such troops; and any sheriff, who fails to make such written report to the governor, must, on conviction, be fined not less than one hundred, nor more than two hundred dollars.

CHAPTER 184.

RAPE. 5444–5450.

5444 (3736) (4304) (3661) (119). **Punishment of rape.**—Any person, who is guilty of the crime of rape, must, on conviction, be punished, at the discretion of the jury, by death, or by imprisonment in the penitentiary for not less than ten years.* (Form 70.)

Rape may be joined in indictment with "carnal knowledge of female child under ten years of age."—Grimes's case, 105 Ala. 186; Beason's case, 72 Ala. 191. Forms in Code sufficient.—Ib.; Leoni's case, 44 Ala. 110. **Force, actual or constructive, essential.**—Murphy's case, 6 Ala. 765; Lewis's case, 30 Ala. 54; McNair's case, 53 Ala. 453; McQuirk's case, 84 Ala. 435. **Constructive force** may be by the use of drugs, intoxicants, or where the woman is idiotic. Lewis's case, 30 Ala. 54. Amount of force or duress necessary may depend upon age, state of health, temper, disposition and other circumstances.—Smith's case, 47 Ala. 540; Waller's case, 40 Ala. 325. **Offense complete** when the woman is made to yield through fear, or the use of drugs, and does not consent voluntarily and consciously.—Hooper's case, 106 Ala. 41; McQuirk's case, 84 Ala. 435; Waller's case, 40 Ala. 325. If the conduct of prosecutrix toward ac-

*As amended by joint committee.

cused at the time be such as to create in his mind an honest and reasonable belief that she **had consented or was willing** to the act, it is not rape. McQuirk's case, 84 Ala. 435; Allen's case, 87 Ala. 107. Acquiescence obtained by **duress, or fear** of personal violence will avail the defendant nothing. McQuirk's case, 84 Ala. 435. **Idiocy or mania,** not mere weak-mindedness, renders woman incapable of consenting.—McQuirk's case, 84 Ala. 435. Prosecutrix may testify as to whether or not she consented.—Jones's case, 104 Ala. 30. Common strumpet, or concubine of ravisher, under protection of the law and cannot be forced.—Boddie's case, 52 Ala. 395. The woman is a competent witness; and her testimony alone, if believed, is sufficient, although she be of ill fame for chastity.—Boddie's case, 52 Ala. 395; Leoni's case, 44 Ala. 110; Barnett's case, 83 Ala. 40. Charge when prosecutrix the only witness, when misleading.—Ib. **Evidence of complaint made by prosecutrix** within reasonable time, but not particulars, admissible.—Leoni's case, 44 Ala. 110; Lacy's case, 45 Ala. 80; Smith's case, 47 Ala. 540; Griffin's case, 76 Ala. 29; Barnett's case, 83 Ala. 40; Allen's case, 87 Ala. 107; Barnes's case, 88 Ala. 204; Hooper's case, 106 Ala. 41. But **defendant may elicit particulars** on cross-examination. Allen's case, 87 Ala. 107; Griffin's case, 76 Ala. 29; Barnett's case, 83 Ala. 40; Scott's case, 48 Ala. 420. And if part elicited by defendant, **state may prove all.**—Barnett's case, 83 Ala. 40. Dying declarations of child not admissible. Johnson's case, 50 Ala. 456. Evidence impeaching and sustaining prosecutrix as to her complaint.—Griffin's case, 76 Ala. 29; Allen's case, 87 Ala. 107. Competency of **child** of tender years **as witness.**—Grimes's case, 105 Ala. 86; McGuff's case, 88 Ala. 147; Beason's case, 72 Ala. 191. **Prior intimate relations** of prosecutrix and defendant as tending to show consent.—Allen's case, 87 Ala. 107; Jones's case, 104 Ala. 30. Her **character for chastity** as bearing on question of consent.—McQuirk's case, 84 Ala. 435. Refusal of prosecutrix to submit to physical examination by experts does not as matter of law discredit her testimony.—Barnett's case, 83 Ala. 40. Lustful remarks made by defendant touching prosecutrix prior to alleged offense, when admissible. Barnes's case, 88 Ala. 204. Precaution to be observed in trial of rape cases. Leoni's case, 44 Ala. 110. Conviction may be had for assault to commit rape, or for assault and battery, or for simple assault.—Richardson's case, 54 Ala. 158; Lewis's case 30 Ala. 54.

5445 (3737) (4896) (4194) (642). **Proof of rape.**—To sustain an indictment for rape, proof of actual penetration is sufficient, when the act is shown to have been committed forcibly and against the consent of the person on whom the offense was committed.

Proof of actual penetration sufficient.—Waller's case, 40 Ala. 325. Conduct of prosecutrix implying consent.—McQuirk's case, 84 Ala. 435; Allen's case, 87 Ala. 107.

5446 (3738) (4305) (3662) (120). **Carnal knowledge of women by administering drug, etc.**—Any person, who has carnal knowledge of any female above fourteen years of age, without her consent, by administering to her any drug or other substance which produces such stupor, imbecility of mind, or weakness of body, as to prevent effectual resistance, must, on conviction, be punished, at the discretion of the jury, by death, or by imprisonment in the penitentiary for not less than ten years.*

Lewis's case, 30 Ala. 54.

5447 (3739) (4306) (3663) (121). **Carnal knowledge of female under fourteen years of age.**—Any person, who has carnal knowledge of any female under fourteen years of age, or abuses such female in the attempt to have carnal knowledge of her, must, on conviction, be punished, at the discretion of the jury, either by death, or by imprisonment in the penitentiary for not less than ten years.* (Form 25.)

Distinguished from rape, though a kindred offense.—Vasser's case, 55 Ala. 264. Meaning of the word "abuse" in the statute.—Dawkins's case, 58 Ala. 376. When indictment insufficient as to describing child abused.—Nugent's

*As amended by joint committee.

case, 19 Ala. 540. Child under eight years a competent witness under discretion of court—Wade's case, 50 Ala. 164. See Carter's case, 63 Ala. 52. An infant adjudged incompetent to testify on a former trial may be old enough to testify on a second trial of same case.—Kelly's case, 75 Ala. 21. Evidence that child had venereal disease may be rebutted by proof of her sexual intercourse with other persons about the time alleged.—Nugent's case, 18 Ala. 521. Dying declarations of child, identifying prisoner, incompetent.—Johnson's case, 50 Ala. 456. Indictment in Code form sufficient.—Beason's case, 72 Ala. 191. May be joined with rape, and prosecution need not elect, though child proved over ten.—Ib. 191. But a conviction cannot be had for this offense under indictment for rape.—Vasser's case, 55 Ala. 264. Verdict of guilty, under disjunctive indictment, sufficient.—Johnson's case, 50 Ala. 456. An indictment which charges that defendant assaulted a girl under ten years of age, with intent to carnally know her, is insufficient under this section.—Toulet's case, 100 Ala. 74. If under ten (now changed to fourteen) cannot consent.—Ib. Neither violence or threats, or consent vel non, are material, or ingredients of the offense.—Ib. An indictment which charges that defendant "did carnally know, or abuse in attempt to carnally know, A. B., a girl under ten years of age," is sufficient, and a general verdict thereunder is sufficient.—McGuff's case, 88 Ala. 147. Defendant cannot, as matter of right, have female alleged to have been ravished by him undergo a physical examination; this is a matter in the court's discretion.—Ib.

Feb. 15, 1897, p. 944, §1.

5448. Carnal knowledge of girl over ten and under fourteen years of age.—Any person, who has carnal knowledge of any girl over ten and under fourteen years of age, or abuses such girl in the attempt to have carnal knowledge of her, must, on conviction, be punished by a fine of not less than fifty, nor more than five hundred dollars, and may be imprisoned in the county jail for six months. This section, however, shall not apply to boys under sixteen years of age.

5449 (3740) (4307) (3664) (122). **Carnal knowledge of married women by falsely personating husband.**—Any person, who falsely personates the husband of any married woman, and thereby deceives her and by means of such deception, gains access to her, and has carnal knowledge of her, must, on conviction, be punished, at the discretion of the jury, by death, or by imprisonment in the penitentiary for not less than ten years; but no conviction must be had under this section on the unsupported evidence of the woman.

5450 (3741) (4308) (3665) (123). **Attempt to have carnal knowledge of married woman by such deception.**—Any person, who falsely personates the husband of any married woman, and thereby gains access to her with the intent to have carnal knowledge of her, must, on conviction, be fined not less than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

CHAPTER 185.

REPRIEVES, COMMUTATIONS AND PARDONS.

ARTICLE 1.—STATEMENT OF PRESIDING JUDGE. 5451.
2.—STAY OF EXECUTION. 5452.
3.—POWER TO REMIT, COMMUTE, OR PARDON, AND PROCEEDINGS THEREON. 5453-5462.

ARTICLE 1.

STATEMENT OF PRESIDING JUDGE.

5451 (4524) (5004) (4327) (776). **Statement filed by judge in executive office; when required.**—When any defendant, on conviction, is sentenced to imprisonment in the penitentiary, for the term of five years or more, it is the duty of the presiding judge to make a statement in writing, setting forth the name of the defendant, the term of the court at which he was tried, the offense of which he was convicted, the character of the evidence against him, the circumstances of aggravation or mitigation developed on the trial, and the proof in reference to his previous character; which statement must be signed by the judge, and must, within thirty days thereafter, be transmitted by the clerk to the governor, to be filed in the executive office.

ARTICLE 2.

STAY OF EXECUTION.

5452 (4525) (5003) (4326) (775). **Execution of sentence postponed to make application for pardon.**—When any defendant is convicted and sentenced to death, or to imprisonment in the penitentiary, the presiding judge, if he is of the opinion that such defendant should be pardoned, may postpone the execution of the sentence for such time as may appear necessary to obtain the action of the governor on an application for pardon.

ARTICLE 3.

POWER TO REMIT, COMMUTE, OR PARDON, AND PROCEEDINGS THEREON.

5453 (4526) (4994, 4995) (4317, 4318) (776, 777). **Power of governor to pardon; entry and attestation of pardons.**— In all cases,

except treason, and impeachment, the governor has power, after conviction, and not otherwise, to grant reprieves, commutations and pardons, and to remit fines and forfeitures; and he must cause to be entered, in a book kept for that purpose, his reasons therefor, and must preserve on file all documents on which he acted; and it is the duty of the secretary of state to attest the reprieve, commutation, or pardon, when granted.

The governor may remit the entire fine, which destroys validity of judgment, except as to the costs.—Chisholm's case, 42 Ala. 528. Release of imprisonment alone is not release of the fine.—Richardson's case, 18 Ala. 109. Legislature cannot, directly or indirectly, remit fines and forfeitures, or grant pardons, except for treason or impeachment.—Haley v. Clark, 26 Ala. 439. Delivery and acceptance necessary to complete pardon; what operates as delivery and acceptance; when acceptance presumed.—Ex parte Powell, 73 Ala. 517.

5454 (4527) (4993). **Notice of application for pardon; copy and proof of notice must accompany application.**—In all cases in which any application is made to the governor to pardon any person convicted of crime, or to remit any fine or forfeiture, the person making such application must first give two weeks' notice, by publication to that effect in a weekly newspaper, if any weekly newspaper is published in the county in which the offender was convicted, or in which one or more of the persons reside for whose benefit the remission of such fine, or forfeiture, or pardon, is sought; and if there is no weekly newspaper published in such county, then by notice in writing, posted at the court-house door of such county, and at three other public places in the county; and in every instance where any such application is made to the governor, a copy of the notice and proof of the fact that such publication has been made, must accompany the application.

5455 (4528) (4997) (4320) (769). **Commutation when punishment by death imposed.**—When punishment of death is imposed, he may, with the consent of the defendant, commute such punishment by substituting for it imprisonment in the penitentiary, or sentence to hard labor for the county, for not less than two years.

5456 (4529) (4998) (4321) (770). **Same; for offenses hereafter committed.**—When punishment of death is imposed for an offense hereafter committed, except murder, rape, robbery, burglary, or arson, he may, with the consent of the defendant, commute such punishment by substituting for it imprisonment in the penitentiary, or sentence to hard labor for the county, for not less than two years.

5457 (4530) (4999) (4322) (771). **Commutation of imprisonment to hard labor.**—When sentence of imprisonment in the penitentiary is imposed, he may commute such punishment by substituting for it sentence to hard labor for the county, for a term equal to the unexpired portion of the defendant's sentence.

5458 (4531) (5000) (4323) (772). **Commuted sentence certified to clerk of court and recorded and enforced.**—When any sentence is commuted under the provisions of the two preceding sections, the governor must cause a statement of such commutation to be certified to the clerk of the court in which the conviction was had, who

must enter the same of record at the next ensuing term, under the direction of the presiding judge; and such commuted sentence must be executed as if it had been rendered by said court.

5459 (4532) (5001) (4324) (773). **Remission of imprisonment on recommendation of inspectors.**—The governor may, in his discretion, remit a part of the imprisonment of a convict in the penitentiary, on the written recommendation of the board of inspectors, to the effect that such convict has conducted himself in an unexceptionable manner during his imprisonment, and that the remission of the remainder thereof would not, in their opinion, be inconsistent with the public good; but no such remission must be granted on the recommendations of the inspectors alone, unless the convict has been imprisoned one-third of the term for which he was sentenced, or, when sentenced for life, or for more than twenty years, has served at least seven years.

Feb. 12, 1891, p. 587. Feb. 18, 1895, p. 849, §87.

5460 (4533) (5002) (4325) (774). **Deduction from term of punishment for good conduct.**—Whenever the inspectors of convicts shall report to the governor that the conduct of any convict in the penitentiary, or at hard labor for the county, has been good during any year or years of his imprisonment, the governor may, in his discretion, order a portion of the sentence of such convict to be deducted for each year of good conduct as follows: From each of the first two years, two months; from each of the next two years, three months; from each of the next two years, four months; from each of the next two years, five months, and from each remaining year after eight years, six months. When the sentence is for less than two years, and not less than six months, such good behavior entitles the convict to a pro rata deduction of the time allowed for the first two years; but no deductions shall be granted in any case where the sentence is for less than six months. But the provisions of this section do not apply to any convict who, after having served a sentence, or a portion of a sentence, either in the penitentiary or at hard labor for the county, has been convicted of a felony, or of a misdemeanor involving moral turpitude; nor to any convict who escapes, or attempts to escape, subsequent to February 12, 1891.

Feb. 13, 1897, p. 867, §1.

5461. Governor may suspend sentence and parole convict on good behavior.—The governor may, whenever he thinks best, authorize and direct the discharge of any convict from custody and suspend the sentence of such convict without granting a pardon, and prescribe the terms upon which a convict so paroled shall have his sentence suspended.

Ib. §2.

5462. Convict failing to observe terms of parole may be rearrested and required to serve out sentence.—Upon the failure of any convict to observe the conditions of his parole, to be determined by the governor, the governor shall have authority to direct the rearrest and return of such convict to custody, and thereupon said convict shall be required to carry out the sentence of the court as though no parole had been granted him.

CHAPTER 186.

RESISTING PROCESS AND REFUSING TO AID OFFICER. 5463-5466.

5463 (3974) (4137) (3580) (39). **Resisting officer in execution of process.**—Any person, who knowingly and willfully opposes or resists any officer of the state in serving, executing, or attempting to serve or execute, any legal writ or process whatsoever, must, on conviction, be fined not less than fifty, nor more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. (Form 73.)

An officer de facto, a sufficient officer.—Heath's case, 36 Ala. 273; Cary's case, 76 Ala. 78; Floyd's case, 79 Ala. 39. What constitutes a de facto officer. Ib. 273; Ib. 78. When and what resistance allowed to a levy on articles exempt.—Johnson's case, 12 Ala. 840. When resistance a simple assault and battery.—Jones's case, 60 Ala. 99. Indictment alleging offense to be after return-day of process, is defective.—McGehee's case, 26 Ala. 154. Sufficient to describe the officer resisted as a constable, or magistrate, or a justice of the peace, without alleging that he was at the time a constable or a justice of the peace.—Murphy's case, 55 Ala. 252. Alternative averments that the warrant was issued by a justice of the peace or a notary public, allowed.—Murphy's case, 55 Ala. 252. Conviction of this offense bars indictment for assault. Johnson's case, 12 Ala. 840. A party may resist the taking of his property under process against a stranger.—Smith's case, 105 Ala. 136. One who voluntarily goes to an officer with process against him, and snatches it from the officer and refuses to allow it to be executed until his attorney can inspect it, is guilty.—King's case, 89 Ala. 43. A defendant who is arrested and carried before a magistrate, but escapes before commitment, may be rearrested under same process.—Floyd's case, 79 Ala. 39. A special deputy, appointed to execute the particular process, is protected.—Andrews's case, 78 Ala. 483, overruling dictum in Kavanaugh's case, 44 Ala. 399.

5464 (3975) (4138) (3581) (40). **Refusal to aid in arrest for breach of the peace.**—Any person, who, being required by any justice or other conservator of the peace, upon view of any breach of the peace, or other offense proper for the cognizance of such officer, to apprehend or assist in apprehending the offender, and bring him before such officer, refuses or neglects to obey the command of such officer, must, on conviction, be fined not less than fifty, nor more than three hundred dollars.

5465 (3976) (4139) (3582) (41). **Refusal to aid officer in making arrest or executing process.**—Any person, who, having been summoned or commanded by any sheriff, constable, or other officer having authority, to assist such officer in making an arrest, or in executing any other duty devolving upon him under any law in relation to public offenses, refuses or neglects to obey such summons or command, must, on conviction, be fined not less than fifty, nor more than three hundred dollars.

It is no excuse that the person thinks it dangerous and futile to obey, but it is proper to submit these questions to the jury.—Dougherty's case, 106 Ala. 63. Policeman or town marshal has right to summon citizens.—Martin's case, 89 Ala. 115. The necessity does not admit of delay; the citizen has no duty to inspect the process before obeying; is not responsible if there be no process. Watson's case, 83 Ala. 60.

5466 (3977) (4140) (3583) (42). **Resisting person aiding officer in execution of process.**—Any person, who assaults, beats, or resists a person not an officer, who is acting in obedience to the lawful summons or command of any justice, sheriff, or other officer, with a knowledge of such command or summons, must, on conviction, be punished in the same manner as if he had assaulted or resisted the officer himself.

CHAPTER 187.

REVENUE, OFFENSES CONCERNING. 5467-5472.

5467 (3892) (4274). **Engaging in or carrying on business without license.**—Any person, who, after the fifteenth day of January in any year, engages in or carries on any business for which a license is required, without having taken out such license, must, on conviction, be fined three times the amount of the state license. (Form 44.)

License to sell intoxicating liquors is a permit which may be revoked, and not a contract.—Powell's case, 69 Ala. 10; Jones v. Hilliard, Ib., 300. Permission by city to retail does not protect one from indictment by state.—Davis's case, 4 Stew. & Port. 83; Estabrook's case, 6 Ala. 653. Only one license required to sell in two adjoining and communicating rooms of same proprietor. Hochstadler's case, 73 Ala. 24. Statute exacting license of products of other states and not of this state, unconstitutional.—Vines's case, 67 Ala. 73. Law requiring license for peddling is constitutional.—Seymour's case, 51 Ala. 52. Also for practicing law.—Cousins's case, 50 Ala. 113. Also for selling sewing-machines.—Quartlebaum's case, 79 Ala. 1. Construction of law requiring license on pistols, bowie-knives, etc.—Porter's case, 58 Ala. 66. **"To engage in or carry on any business,"** within the meaning of the revenue law, is to pursue an occupation or employment, as a livelihood, or as a source of profit; but it is not necessary that it should be the party's sole occupation or employment; it is a question of intention for the determination of the jury.—Harris's case, 50 Ala. 127. See also Moore's case, 16 Ala. 411; Carter's case, 44 Ala. 29; Johnson's case, Ib. 414; Bryant's case, 46 Ala. 302; Espy's case, 47 Ala. 533; Weil's case, 52 Ala. 19; Grant's case, 73 Ala. 13. See also Abel's case, 90 Ala. 631. And it is immaterial whether such profit was realized or not.—Weil's case, 52 Ala. 19. While a single act pertaining to a business may not be sufficient, a series of such acts will.—Weil's case, 52 Ala. 19; Martin's case, 59 Ala. 34; Sanders's case, 58 Ala. 371; Lawson's case, 55 Ala. 118; McPherson's case, 54 Ala. 221; Ulmer's case, 61 Ala. 208; Bryant's case, 46 Ala. 302; Jackson's case, 50 Ala. 141. When one act of sale or exhibition sufficient proof of engaging in business.—Chambers's case, 26 Ala. 64; Abel's case, 90 Ala. 631. To constitute occupation or vocation.—Johnson's case, 44 Ala. 414. What constitutes a "dealer in tobacco."—Carter's case, 44 Ala. 29. "Commission merchant."—Perkins's case, 50 Ala. 154. A "theater."—Gillman's case, 55 Ala. 248. "Exhibition of sleight of hand."—Pike's case, 35 Ala. 419. "Retailing liquor." Lemon's case, 50 Ala. 130; Lillensteine's case, 46 Ala. 498; Nicrosi's case, 52 Ala. 336; Winter's case, 30 Ala. 22. "Wholesale liquor-dealer."—Espy's case, 47 Ala. 533; Hafter's case, 51 Ala. 37. "Sewing-machines."—Merritt's case, 59 Ala. 46; Quartlebaum's case, 79 Ala. 1. "Distilling."—Grant's case, 73 Ala. 13. Intent necessary; and how proved, and for the jury.—Carter's case, 44 Ala. 29; Merritt's case, 59 Ala. 46; Weil's case, 52 Ala. 19. Superintendent, or manager, of corporation without license, indictable.—Elsberry's case, 52 Ala. 8. **Two or more persons jointly indicted** liable to joint or separate fine. Lemon's case, 50 Ala. 130. Taking out license **subsequent to acts done,** no defense.—Elsberry's case, 52 Ala. 8. **Indictment** may allege in one count, conjunctively, different liquors, "brandy, whisky and gin," just as different articles stolen may be alleged in larceny.—Whitted's case, 3 Ala. 102. For retailing liquor, must allege the place, with sufficient certainty to show amount of license required, so that, on conviction, the proper fine may be imposed.

Harris's case, 50 Ala. 127; Childs's case, 52 Ala. 14; Hafter's case, 51 Ala. 37. Averment of time fixed by law for taking out license, when held necessary. McIntyre's case, 55 Ala. 167. When not.—Henback's case, 53 Ala. 525. Indictment must conform to statute describing the offense.—McPherson's case, 54 Ala. 221. Sufficiency of indictment for "selling sewing-machines" without license.—Merritt's case, 59 Ala. 46. "Exhibiting feats of sleight of hand." Pike's case, 35 Ala. 419. "Distilling liquors."—Johnson's case, 44 Ala. 414. "Practicing law."—Cousins's case, 50 Ala. 113. "Wholesale liquor-dealer." Koopman's case, 61 Ala. 70. "Retailing liquor."—Harris's case, 50 Ala. 127; Childs's case, 52 Ala. 14. "Keeping a restaurant."—Huttenstein's case, 37 Ala. 157. "Hawking and peddling."—Sterne's case, 20 Ala. 43. "Peddling." May's case, 9 Ala. 167. **Evidence** for state need not show that there is no license; burden is on defense to prove that a license was taken out.—Porter's case, 58 Ala. 66. **Penalty** is three times amount of annual license.—Weil's case, 52 Ala. 19. A verdict fixing the fine at $375 is sufficiently definite. Sampson's case, 107 Ala. 76. The clerk of principal who makes the sale is guilty of carrying on business.—Abel's case, 90 Ala. 631; Dentler's case, 112 Ala. 70. A traveling agent, selling by sample only and sending orders to principal out of state, is not required to have license for carrying on business in state.—Ex parte Murray, 93 Ala. 78; Agee's case, 83 Ala. 110. Selling whisky in prohibition district is not an offense of carrying on business without license. Cost's case, 96 Ala. 60. License to partnership to peddle is protection to one of its members.—Shiff's case, 84 Ala. 454. Proof of sales out of county of indictment is admissible to show accused was carrying on business of itinerant dealer. Ib. The indictment need not allege business was carried on since January 15th; this is matter of defense.—Dentler's case, 112 Ala. 70. If verdict fix fine at too great amount court may order jury to retire and correct it.—Ib. Indictment need not state year in which business was carried on.—Ib. License a tax for which state may maintain action of debt.—State v. Fleming, 112 Ala. 179.

5468 (3895). **Selling lightning-rods without license.**—Any person, who sells lightning-rods for himself or as agent for another, without payment of the tax required by law, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars.

5469 (3896). **Engaging in business as mercantile agent for unlicensed agency.**—Any agent or correspondent of any unlicensed person, partnership, or corporation, engaged in the business of inquiring into, and reporting upon the credit and standing of persons doing business in this state, who makes any report to, or transacts any business for his principal, must, on conviction, be fined not more than five hundred dollars.

5470 (3897). **Acting as agent for unlicensed foreign insurance company.**—Any person, who acts as agent of any unlicensed foreign insurance company, must, on conviction, be fined in a sum equal to the state, county and municipal tax required to be paid by such company for license, and five hundred dollars in addition thereto; and, on a second or other conviction, must be fined one thousand dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county, for six months.

Jackson's case, 50 Ala. 141; Robinson's case, 86 Ala. 622.

5471 (3903) (4277). **False or fraudulent list by taxpayer.**—Any taxpayer, or other person, whose duty it is to return tax-list, who renders a false or fraudulent tax-list, must, on conviction, be fined not less than fifty, nor more than two hundred dollars, at the discretion of the court; and it is the duty of the assessor to present all persons so offending to the first grand jury thereafter.

Feb. 28, 1887, p. 3, §43.

5472. Failure of president or cashier of bank to make returns to assessor.—Any president or cashier of any bank or banking association, who fails or refuses to make out, swear to and deliver to the tax-assessor, the statement required by subdivision 8 of section 3911 of this Code, within the time therein prescribed, must, on conviction, be fined not less than two hundred dollars, and may also be sentenced to hard labor for the county for not more than three months.

CHAPTER 188.

RIOTS, ROUTS AND UNLAWFUL ASSEMBLIES. 5473-5478.

5473 (3765) (4102) (3549) (9). **Unlawful assemblies.**—If three or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them must, on conviction, be punished, at the discretion of the jury, by fine and imprisonment in the county jail, or hard labor for the county, for not more than six months.

5474 (3766) (4103) (3550) (10). **Riots and routs.**—If any persons, unlawfully assembled, demolish, pull down, or destroy, or begin to demolish, pull down, or destroy, any dwelling-house or other building, or any ship or vessel, they must each be punished, on conviction, at the discretion of the jury, by fine and imprisonment in the county jail, or by imprisonment in the penitentiary, for not less than two, nor more than five years. (Form 74.)

Feb 28, 1889, p. 99, §1.

5475. Selling liquor, arms, etc., during riot in city, town, or village.—Whenever any mob, riot, or tumult occurs in any city, town, or village, all persons therein who sell intoxicating liquors, arms, ammunition, dynamite, or other explosives, shall immediately close their barrooms, saloons, shops, or other places where such business is carried on, and keep them closed, and refrain from selling, bartering, lending, or giving away any of the articles above mentioned, until such time as public notice shall be given by the sheriff, mayor or intendant, that such places may be opened, and such business carried on; and any person failing to close up such barroom, saloon, shop, or other place where any of the businesses above mentioned are carried on, or who sells, barters, or gives away any of the articles mentioned, after knowing, or having good reason to believe, that a riot, mob, or tumult has occurred, or is then going on, shall be guilty of a high misdemeanor, and, on conviction thereof, shall forfeit his license, and forever thereafter be debarred from engaging in such business, and may be fined not less than five hundred dollars nor more than one thousand dollars, and may also be imprisoned for not more than one year, either or both, at the discretion of the jury trying the case.

5476. Violating proclamation prohibiting sale of liquor, arms, etc., in city, town, or village during riot.—Whenever any mob, riot, or tumult has occurred, or there is reasonable cause to apprehend an outbreak thereof in any city, town, or village, or in the vicinity thereof, the mayor or intendant must immediately issue his proclamation ordering the closing of all the places mentioned in the preceding section and forbidding the selling, lending, giving away, bartering, or otherwise disposing of any of the articles mentioned in the preceding section until such time as, in his judgment, such occupation may be carried on without danger to the public peace and safety; and any person knowingly violating the provisions of such proclamation, or suffering any person in his employ to do so, or conniving with any other person to evade the terms of such proclamation, shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than five hundred, and not more than one thousand dollars, and may also be imprisoned in the county jail, or put to hard labor for the county, for not exceeding six months, and shall forever thereafter be debarred from engaging in such occupation, either or both, at the discretion of the jury trying the case. Ib. §2.

5477. Violating order of officer commanding state troops prohibiting sale of liquor, arms, etc.—Whenever any portion of the Alabama state troops are actually on duty by order of the governor, or other civil magistrate, to aid in the enforcement of the laws, the commanding officer of such troops may order the closing of all places where intoxicating liquors, arms, ammunition, dynamite, or other explosives are sold, and forbid the selling, bartering, lending, or giving away of all such articles, so long as any of the troops remain on duty in such city, town, or village, or place in the vicinity thereof, whether any civil officer has forbidden the opening of such places or the doing of such acts or not; and the commanding officer of such troops may continue such order in force until the departure of the troops, although some civil magistrate may have prescribed an earlier date at which such occupation may be carried on; and any person who knowingly violates such order, shall, on conviction, forfeit his license, and may also be imprisoned in the county jail, or put to hard labor for the county, for not more than six months, either or both, at the discretion of the jury trying the case. Ib. §3.

5478. Selling liquor to state troops while on duty.—Any person, who knowingly sells, gives away, or barters to any officer or member of the state troops any intoxicating liquors in any city, town, or village, wherein such troops are on duty to aid in the enforcement of the laws, without first obtaining a written permit therefor from the commanding officer of such troops, shall, on conviction, forfeit his license, and be fined not more than five hundred dollars, and may also be imprisoned in the county jail, or put to hard labor for the county, for not more than six months, either or both, at the discretion of the jury trying the case. Nothing in this or the three preceding sections shall be construed to prevent any compounder of medicines or apothecary from filling any prescription by any regu- Ib. §§4, 7.

larly licensed physician for any patient who may, in the judgment of such physician, need such intoxicating liquor; but no such prescription shall be filled unless in writing, stating the name of the patient and signed by the physician; nor shall said sections be construed to prevent the sale to any minister of the gospel of such wines as may be necessary for sacramental purposes, or to any medical officer of the state troops. Any physician who gives any prescription with the intent to evade the provisions of this chapter, shall, on conviction, forfeit his license and may also be fined not exceeding five hundred dollars.

CHAPTER 189.

ROBBERY. 5479–5482.

5479 (3742) (4311) (3668) (126). **Punishment of robbery.**—Any person, who is convicted of robbery, must be punished, at the discretion of the jury, by death, or by imprisonment in the penitentiary for not less than ten years. (Form 77.)

Some property must be taken by violence from person robbed.—James's case, 53 Ala. 380; Jackson's case, 69 Ala. 249. Taking in presence of owner or possessor, same as taking from his person.—Cracker's case, 47 Ala. 53; James's case, 53 Ala. 380. A person intrusted to help carry goods along with the owner, and by violence carrying them off, may be guilty of robbery, his possession before the violence being constructive possession of owner.—Ib. While unexpectedly snatching goods is not robbery, yet if there be resistance overcome by force, or threats of actual violence creating reasonable apprehension, it is robbery.—Jackson's case, 69 Ala. 249; Evans's case, 80 Ala. 4. Indictment may follow Code form; omission to charge felonious intent is fatal.—Chappel's case, 52 Ala. 359. Must contain distinct averment of value of property taken; what sufficient.—Jackson's case, 69 Ala. 249; Wesley's case, 61 Ala. 282. What insufficient description of money, bank-notes, etc.—Cracker's case, 47 Ala. 53; Wesley's case, 61 Ala. 282. Proof that property had a specific value immaterial; sufficient if of value to owner, and not worthless.—Jackson's case, 69 Ala. 249. See James's case, 53 Ala. 380; Wesley's case, 61 Ala. 282. May be a conviction of larceny under such indictment.—Allen's case, 58 Ala. 98; Moore's case, 97 Ala. 82; Thomas's case, 91 Ala. 82. If a gun is obtained by artifice without putting in fear, it does not constitute robbery, though after obtaining it the defendant points the gun at owner and tells him to run or he will shoot him. Thomas's case, 91 Ala. 34, overruling James's case, 53 Ala. 380. The offense is against the person and property; against the person by violence or intimidation at the time of taking, against the property by "manucaption animo furandi." Ib. Possession of the property by the person alleged to have been robbed, an hour or so before robbery, is admissible.—Bradley's case, 103 Ala. 29. The description of property, though unnecessary, must be proved as alleged.—Morris's case, 97 Ala. 82

Feb. 18, 1895, p. 922, §2.

5480. Train-robbery defined and punished.—Any person, who enters upon or goes near to any locomotive-engine or car on any railroad and, by threats or by the exhibition of a deadly weapon or by the discharge of a pistol or gun in, upon or near such engine or car, induces or compels any person on such engine or car to deliver up or allow to be taken from such engine or car, or from such person, any thing of value, is guilty of train-robbery, and must, on conviction, be punished, at the discretion of the jury, by death, or by imprisonment in the penitentiary for not less than ten years.

5481. Attempt to commit train-robbery punished.—Any person, who stops, impedes, or detains, or attempts to stop, impede, or detain any locomotive-engine or car, with the intent to commit train-robbery, must, on conviction, be punished by imprisonment in the penitentiary for not less than ten, nor more than thirty years. Ib. §1

5482. Conspiracy to commit train-robbery punished.—Any two or more persons, conspiring together to commit train-robbery, must, on conviction, be punished by imprisonment in the penitentiary for not less than ten, nor more than thirty years. Ib.

CHAPTER 190.

SEARCH-WARRANTS. 5483–5502.

5483 (4011) (4141) (3584) (43). **Suing out search-warrant maliciously and without probable cause.**—Any person, who maliciously, and without probable cause, procures a search-warrant to be issued and executed, must, on conviction, be fined not less than twenty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

5484 (4727) (4005) (4376) (825). **Definition of warrant.**—A search-warrant is an order in writing in the name of the state, signed by a magistrate, directed to the sheriff, or to any constable of the county, commanding him to search for personal property, and bring it before the magistrate.

When, and only when, the warrant will issue.—Ex parte Hurn, 92 Ala. 102, 111; Chastang's case, 83 Ala. 30. When affidavit and warrant void on face and no protection to officer.—Counts v. Harlan, 78 Ala. 551.

5485 (4728) (4006) (4377) (826). **On what ground issued.**—It may be issued on any one of the following grounds:

1. Where the property was stolen or embezzled.
2. Where it was used as the means of committing a felony.
3. Where it is in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom he may have delivered it, for the purpose of concealing it, or preventing its discovery.

See note to preceding section.

5486 (4729) (4007) (4378) (827). **Probable cause and affidavit required.**—It can only be issued on probable cause, supported by affidavit, naming or describing the person, and particularly describing the property, and the place to be searched.

What not probable cause.—Counts v. Harlan, 78 Ala. 551.

5487 (4730) (4008, 4009) (4379, 4380) (828, 829). **Complainant and witnesses examined on oath; contents of depositions.**—The magistrate, before issuing the warrant, must examine on oath the

complainant and any witness he may produce, and take their depositions in writing, and cause them to be subscribed by the persons making them; and the depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

5488 (4731) (4010) (4381) (830). **Warrant to issue, if cause shown.**—If the magistrate is satisfied of the existence of the grounds of the application, or that there is probable ground to believe their existence, he must issue a search-warrant signed by him, directed to the sheriff, or to any constable of the county, commanding him forthwith to search the person or place named for the property specified, and to bring it before the magistrate.

5489 (4732) (4011) (4382) (831). **Search-warrant; form of.** The warrant may be substantially in the following form:

"The State of Alabama, } To the sheriff or any constable of ———
——— county. } county.

Proof by affidavit having this day been made before me by A. B. that (stating the particular ground on which the warrant issued out; or, if the affidavits are not positive, that there is probable ground for believing that, etc.); you are, therefore, commanded, in the daytime (or at any time of the day or night, as the case may be), to make immediate search on the person of C. D. (or in the house of C. D., as the case may be), for the following property: (Particularly describing it); and if you find the same, or any part thereof, to bring it forthwith before me, at, etc. (stating place). Dated the —— day of ———, 18—.

(Signed) E. F.,
Justice of the Peace of said County
(or other magistrate, as the case may be)."

When warrant void on its face, it is no protection to officer executing it. Counts v. Harlan, 78 Ala. 551.

5490 (4733) (4012) (4383) (832). **Warrant executed by whom.** The warrant may be executed by any one of the officers to whom it is directed, but by no other person, except in aid of such officer, at his request, he being present and acting in its execution.

5491 (4734) (4013) (4384) (833). **When executed; magistrate must state time in warrant.**—It must be executed in the daytime, unless the affidavits state positively that the property is on the person or in the place to be searched, in which case it may be executed at any time of the day or night; and the magistrate issuing it must state in the warrant, according to the character of the affidavits, whether it is to be executed by day, or at any time of the day or night.

5492 (4735) (4014) (4385) (834). **Authority of officer in executing warrant.**—To execute the warrant, the officer may break open any door or window of a house, or any part of a house, or anything therein, if, after notice of his authority and purpose, he is refused admittance.

5493 (4736) (4015) (4386) (835). **Property taken, where and from whom.**—When the warrant is sued out on the first ground spec-

ified in the second section of this chapter, the property may be taken under the warrant from any house or other place in which it is concealed, or from the possession of any person by whom it was stolen or embezzled, or from any other person in whose possession it may be; when sued out on the second ground specified in such section, it may be taken under the warrant from any house, or other place in which it is concealed, or from the possession of the person by whom it was so used, or from any other person in whose possession it may be; and when sued out on the third ground specified in such section, the property may be taken under the warrant from the possession of such person, or from any house, or other place occupied by him, or under his control, or from the possession of the person to whom he may so have delivered it.

5494 (4737) (4016) (4387) (836). **Receipt given for property.** When an officer takes property under the warrant, he must, if required, give a receipt to the person from whom it was taken, or in whose possession it was found.

5495 (4738) (4017) (4388) (837). **Warrant returned in ten days, else void.**—The warrant must be executed and returned to the magistrate by whom it was issued, within ten days after its date; and after that time, if not executed, it is void.

5496 (4739) (4018) (4389) (838). **Contents of return of warrant; copies to parties.**—The officer, in his return of the warrant to the magistrate, must specify with particularity the property taken; and the applicant for the warrant, and the persons from whose possession the property was taken are entitled to a copy of the return, signed by the magistrate.

5497 (4740) (4019) (4390) (839). **Disposal of property by magistrate.**—When the property is taken under the warrant and delivered to the magistrate, he must, if it was stolen or embezzled, cause it to be delivered to the owner, on satisfactory proof of his title, and the payment by him of all fees; but if the warrant was issued on the second or third ground specified in the second section of this chapter, he must retain the property in his possession, subject to the order of the court to which he is required to return the proceedings, or of the court in which the offense is triable, in respect to which the property was taken.

Sullivan v. Robinson, 39 Ala. 613.

5498 (4741) (4020) (4391) (840). **Contest of facts before magistrate.**—If the grounds on which the warrant was issued be controverted, the magistrate must proceed to hear the testimony, which must be reduced to writing, and authenticated in the manner prescribed in section 5487 (4730).

Henderson v. Felts, 58 Ala. 590.

5499 (4742) (4021) (4392) (841). **When property restored to defendant.**—If it appear that the property is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the ground on which the warrant issued, the

magistrate must direct it to be restored to the person from whom it was taken.

5500 (4743) (4022) (4393) (842). **Proceedings returned to court, unless property restored to defendant.**—The magistrate must, if the property is not directed to be restored under the provisions of the preceding section, annex together the search-warrant, the return and depositions, and return them to the circuit court having power to inquire into the offense, in respect to which the search-warrant was issued.

5501 (4744) (4023) (4394) (843). **When costs taxed against plaintiff.**—The complainant must pay the fees of the warrant before he is entitled to the same, and must also pay the officer his fees for the execution, before the same is executed; and if, on the hearing, it appear that there was no probable cause for believing the existence of the grounds on which the warrant was issued, the whole costs may be taxed against the complainant, and an execution issued therefor, returnable on any day the magistrate may direct.

5502 (4745) (4024) (4395) (844). **Persons charged with a felony searched for weapons or evidence.**—When a person charged with a felony is supposed by the magistrate before whom he is brought, to have upon his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and such weapon or other thing to be retained, subject to the order of the court in which the defendant may be tried.

Ex parte Hurn, 92 Ala. 102, 111.

CHAPTER 191.

SEDUCTION. 5503.

5503 (4015) (4188). **Seduction.**—Any man, who, by means of temptation, deception, arts, flattery, or a promise of marriage, seduces any unmarried woman in this state, must, on conviction, be imprisoned in the penitentiary for not less than one, nor more than ten years; but no indictment or conviction shall be had under this section on the uncorroborated testimony of the woman upon whom the seduction is charged; and no conviction shall be had if, on the trial, it is proved that such woman was, at the time of alleged offense, unchaste.

Indictment pursuing the language of the statute is sufficient.—Wilson's case, 73 Ala. 527 (reaffirmed in Smith's case, 107 Ala. 139, 145, as "a correct exposition of the statute"). The word **"seduce" imports** not only illicit sexual intercourse, **but a surrender of the woman's chastity.**—Wilson's case, 73 Ala. 527. **The woman must be unmarried, chaste at the time of the alleged seduction, and it must be accomplished, either** by means of "temptation, deception, arts, flattery, or a promise of marriage."—Wilson's case, 73 Ala. 527; Carney's case, 79 Ala. 14; Hussey's case, 86 Ala. 34; Munker's case, 87 Ala. 94; Cooper's

case, 90 Ala. 641; Anderson's case, 104 Ala. 83; Smith's case, 107 Ala. 139; Bracken's case, 111 Ala. 68. **Chastity** is an essential element; but its existence is **presumed** in the absence of evidence to the contrary.—Wilson's case, 73 Ala. 527; Hussey's case, 86 Ala. 34; Munker's case, 87 Ala. 94; Smith's case, 107 Ala. 139. The inquiry is not as to character or reputation, but as to actual chastity at the time of the alleged seduction.—Hussey's case, 86 Ala. 34; Munker's case, 87 Ala. 94; Bracken's case, 111 Ala. 68. But in rebuttal of evidence tending to impeach her chastity, the prosecutrix may adduce evidence of her general character in that respect.—Smith's case, 107 Ala. 139. A reasonable doubt of the existence of chastity **at the time** of the alleged seduction entitles defendant to an acquittal.—Wilson's case, 73 Ala. 527; Carney's case, 79 Ala. 14; Munker's case, 87 Ala. 94. Evidence of criminal intimacy with other men at times subsequent to the time of the alleged seduction is inadmissible.—Bracken's case, 111 Ala. 68. Sufficiency of **corroboration of prosecutrix**.—Cunningham's case, 73 Ala. 51; Munker's case, 87 Ala. 94; Cooper's case, 90 Ala. 641. **Prosecutrix** cannot testify as to **motives** prompting or causes inducing her to consent; facts must be stated and left to the jury.—Wilson's case, 73 Ala. 527; Anderson's case, 104 Ala. 83. Nor can a witness testify that defendant **acted toward prosecutrix as a suitor or lover,** such being inferential facts to be found by the jury.—Carney's case, 79 Ala. 14. That defendant **offered to marry** prosecutrix after birth of child incompetent in his behalf. Smith's case, 107 Ala. 139. Nor can state prove that defendant **sought an adjustment** with prosecutrix.—Wilson's case, 73 Ala. 527. **Birth of child** as evidence of factum of sexual intercourse.—Cunningham's case, 73 Ala. 51. Evidence of **preparations** for marriage on the part of the woman.—Cooper's case, 90 Ala. 641. **Letters** admitting engagement.—Bracken's case, 111 Ala. 68. **Confessions.**—Anderson's case, 104 Ala. 83; Bracken's case, 111 Ala. 68. A conviction may be had if seduction committed at **any time covered by the indictment**; no election required.—Smith's case, 107 Ala. 139. **Charges limiting inquiry** to less than all the means mentioned in the statute, properly refused.—Anderson's case, 104 Ala. 83; Bracken's case, 111 Ala. 68.

CHAPTER 192.

SERVANTS, APPRENTICES, EMPLOYES AND IMMIGRANTS; OFFENSES CONCERNING. 5504–5512.

5504 (3756) (4324) (3690) (147). **Enticing away servants or apprentices.**—Any person, who entices, decoys, or persuades any apprentice or servant to leave the service or employment of his master, must, on conviction, be fined not less than twenty, nor more than one hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months.

Owen's case, 48 Ala. 328.

5505 (3757) (4325) (3691). **Enticing away servants or laborers under written contract, etc.**—Any person, who knowingly interferes with, hires, employs, entices away, or induces to leave the service of another, or attempts to hire, employ, entice away, or induce to leave the service of another, any laborer or servant who has contracted in writing to serve such other person for any given time, not to exceed one year, before the expiration of the time so contracted for, or who knowingly interferes with, hires, employs, entices away, or induces any minor to leave the service of any person to whom such service is lawfully due, without the consent of the party employing, or to whom such service is due, given in writing, or in the

presence of some credible person, must, on conviction, be fined not less than fifty, nor more than five hundred dollars, at the discretion of the jury, and in no case less than double the damages sustained by the party whom such laborer or servant was induced to leave; one half to the party sustaining such damage, and the other half to the county. (Form 45.)

Not in violation of law of congress known as "civil rights bill."—Murrell's case, 44 Ala. 367. If contract in writing legally dissolved, laborer can make another.—Ib. 368. Prior verbal contract with accused, good defense.—Turner's case, 48 Ala. 549; Tartt's case, 86 Ala. 26. Infant's contract voidable, and, when disaffirmed, he may be hired by another.—Langham's case, 55 Ala. 114 (overruling, onthis point, Murrell's case, supra). Contract must be in writing. Murrell's case, 44 Ala. 367. Must be mutual.—Ib. 367. Knowledge of previous subsisting contract not essential to conviction; but, with such knowledge, refusal to discharge laborer is sufficient.—Murrell's case, Ib. 368. No conviction, if defendant's agent did the enticing.—Roseberry's case, 50 Ala. 160. Indictment may follow language of statute, and charge in alternative.—Murrell's case, 44 Ala. 367. And must allege Christian name of laborer, or that it is unknown.—Roseberry's case, 50 Ala. 160. The statute is not unconstitutional in attempting to punish criminally for violation of contract.—Tarpley's case, 79 Ala. 271. It is as much violation to hire servant after as before he quits service of employer.—Ib. A father is not liable for enticing his own minor child to leave employment, though he had hired out such minor.—Driscol's case, 77 Ala. 84. On desertion of family by father, mother entitled to service of children.—Winslow's case, 92 Ala. 78. In case of minor child, no express contract necessary.—Gandy's case, 81 Ala. 68. Complaint amendable.—Ib. Consent of employer to the employment is a defense; but if only conditional, performance of the condition must be shown.—Prestwood's case, 87 Ala. 147.

5506 (3758) (4327) (3693). **Same; evidence of enticement.** When any laborer or servant, having contracted as provided in the preceding section, is afterwards found in the service or employment of another before the termination of such contract, that fact is prima facie evidence that such person is guilty of a violation of that section, if he fail and refuse to forthwith discharge such laborer or servant, after being notified and informed of such former contract or employment.

5507 (3759) (4328) (1452) (1217). **Master violating duty to apprentice.**—A master, violating any duty to his apprentice, as prescribed by section 501 (1479) of the Code, must, on conviction, be fined not less than fifty dollars.

Cockran's case, 46 Ala. 714.

5508 (3760) (4329) (1458). **Enticing away, and giving supplies, etc., to apprentice.**—Any person, who entices away any apprentice from his master, or knowingly employs an apprentice, or furnishes him food and clothing, without the written consent of his master, or gives or sells such apprentice ardent spirits without such consent, must, on conviction, be fined not exceeding five hundred dollars.

5509 (3761) (4330) (1472). **Enticing away immigrant from employer.**—Any person, who employs any immigrant, or otherwise entices him from his employer, in violation of the contract of such immigrant, must, on conviction, be fined in a sum not less than the amount of wages for the unexpired term of the contract, and may be imprisoned in the county jail, or sentenced to hard labor for the county, at the discretion of the jury, for not more than three months.

5510 (3762) (4331) (1473). **Immigrant leaving service without payment of advances.**—Any immigrant, who abandons or leaves the service of an employer without repaying all passage-money and all other advances, must, on conviction, be fined in a sum not more than double the amount of wages for the unexpired term of service, and imprisoned not longer than three months, or sentenced to hard labor for the county for not more than three months, at the discretion of the jury.

5511 (3763). **Preventing persons from engaging in peaceful work or lawful industry.**—Any person, who, by force or threats of violence to person or property, prevents, or seeks to prevent another from doing work or furnishing materials, or from contracting to do work or furnish materials, for or to any person engaged in any lawful business, or who disturbs, interferes with, or prevents or in any manner attempts to prevent the peaceable exercise of any lawful industry, business, or calling by any other person, must, on conviction, be fined not less than ten, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

5512. Employer of female clerks must provide seats, etc.—Any person, owning or controlling a store or shop in which any female is employed as a clerk or saleswoman, who fails to provide such female with proper accommodations for sitting and resting when not actively engaged in the work of her employment, or who fails to permit her to do so when not so engaged, must, on conviction, be fined not less than ten dollars. Feb. 28, 1889, p. 81.

CHAPTER 193.

SOLICITORS. 5513–5539.

5513 (4244) (769) (853) (721). **How solicitors selected.**—A solicitor for each judicial circuit in the state must be elected by joint vote of the general assembly, and his term of office shall be for six years, and until his successor is elected and qualified.

5514 (4245) (770) (854) (722). **Vacancies; how filled.**—Vacancies in such office are filled by the governor, the appointee to hold during the unexpired term, and until his successor is elected and qualified.

5515 (4246) (771) (855) (723). **Must reside in circuit, or vacate office; notice of vacancy.**—Every solicitor must reside in his circuit at the time of his election and during his continuance in office, or he vacates his office; and it is the duty of the judge of the circuit to notify the governor of such failure, who must supply the vacancy.

5516 (4247) (772) (856) (724). **Duties of solicitors.**—It is the duty of every circuit, county, city or other solicitor, within the cir-

cuit, county or other territory for which he is elected or appointed—

1. To attend on the grand juries, advise them in relation to matters of law, and examine and swear witnesses before them.

2. To draw up all indictments and to prosecute all indictable offenses.

3. To prosecute and defend any civil action in the circuit or city court, in the prosecution or defense of which the state is interested.

4. To inquire whether registers in chancery have performed the duty required of them by section 663 (743), and must, in every case of failure, move against such register as required by section 3799 (3131).

5. If a criminal prosecution is removed from a court of his circuit to a court of the United States, to appear in such court and represent the state; and if it be impracticable for him, consistently with his other duties, to attend such court, he may designate and appoint an attorney practicing therein to appear for, and represent the state.

6. To attend each special term of the circuit court held for the trial of persons charged with felony; and on failure so to do, a conditional judgment must be rendered against him for fifty dollars, to be made absolute on notice to him at the next term thereafter, unless a good excuse is rendered.

7. To perform such other duties as are, or may be required by law.

Solicitor's signature not essential to validity of indictment.—Cross's case, 78 Ala. 430; Joyner's case, 78 Ala. 448. The practice of an attorney appearing at request of solicitor and aiding in the examination of witnesses before grand jury, condemned.—Blevins's case, 68 Ala. 92.

5517 (4248, 4249) (773, 774) (857, 858) (725, 726). **Duty of solicitors to attend their courts; penalty as to other than salaried solicitors.**—It is the duty of every circuit, city, county or other solicitor to attend each term of the court for which he is solicitor and to remain in the discharge of his duties until the business of the state is disposed of; and any solicitor other than those mentioned in the next section, failing to so attend, or absenting himself before the business of the state is disposed of, forfeits to the state the sum of one hundred dollars, for which a conditional judgment must be rendered, to be made absolute on notice to such solicitor, unless a good excuse is rendered.

Dec. 12, 1892, p. 86, §1.

5518. Penalty against salaried solicitors for failing to attend court and perform duties.—If any solicitor, who is paid a salary by the state, fails or neglects to attend any term of the court for which he is solicitor, or, after attending, absents himself before the business of the state is disposed of, he forfeits to the state the sum of twenty-five dollars for each and every day he is thus absent or fails to attend, to be deducted by the auditor from his salary; the absence or failure of such solicitor to be certified to the auditor by the clerk of the court within ten days after the term, under a penalty of one hundred dollars, to be recovered in the name of the state, on two days' notice.

Ib. §2.

5519. Excuse; must be filed with auditor in ten days.—The deduction provided for in the preceding section must not be made if

the solicitor make and file with the auditor, within ten days after the term from which he is absent, an affidavit that such failure to attend or absence was on account of sickness of himself or family, or inevitable accident, or of an epidemic or contagious disease, or well-grounded apprehension thereof.

5520. Reports to the attorney-general required of all solicitors. Feb. 18, 1893, p. 679, §1. It is the duty of all circuit and county solicitors and all solicitors of city and criminal courts, within ten days after the adjournment of each term of their respective courts, to make and certify to the attorney-general, on blanks to be furnished by the state, a report in writing, stating, as to each character of criminal cases, the number of cases disposed of at each term, the number of convictions, the number of acquittals, the number of nolle prosequies entered, the number which were abated or withdrawn, the number of sentences to death, the number of sentences to the penitentiary, the number of sentences to hard labor for the county, the number of sentences to jail, the number of fines paid or secured, and the totals under each head above mentioned; also the number of criminal cases then pending on the docket.

5521. Penalty for failing to make such report; how recovered. Ib. §2. Any solicitor, or other person acting as solicitor, who shall fail to make full report as and within the time required by the preceding section, forfeits to the state the sum of two hundred dollars, unless he shows a good and sufficient excuse for such failure, to be recovered on motion of the attorney-general in the circuit or city court of Montgomery county, on ten days' notice of such motion. If such defaulting solicitor be paid a salary by the state, such judgment and the costs thereof may be certified to the auditor and the amount retained out of the salary of such solicitor.

5522 (4250) (775) (859) (727). **When attorney appointed to act as solicitor; compensation.**—The presiding judge, when the solicitor is absent, or when he is connected with the party against whom it is his duty to appear, by consanguinity or affinity within the fourth degree, or when there is a vacancy in the office from any cause, or when the general assembly has failed to elect a solicitor, or when the solicitor refuses to act, must appoint a competent attorney to act in the solicitor's place, who shall act during the absence or disqualification of the solicitor, or until the office is filled by the appointment of the governor, or by an election by the general assembly, or while the solicitor refuses to act; and in all such cases the attorney so appointed shall be entitled to all the fees allowed the solicitors, which shall be taxed against the defendant, on conviction, and collected in the same manner that solicitors' fees are collected.

Appointment must be by the court and entered of record, and can only be proved by the record.—Joyner's case, 78 Ala. 448.

5523 (4251) (776). **Solicitor suspended when indicted.**—When it shall be made known to any circuit or city court that an indictment is pending against the person who is acting as solicitor of the county in which the court is held, the court must make an order

suspending such solicitor; and the solicitor so suspended shall not act as solicitor until such order of suspension shall be set aside.

County solicitor a "ministerial officer," indictable for receiving a bribe, although merely acting solicitor de facto.—Diggs's case, 49 Ala. 311. Conviction of felony vacates office.—Ex parte Diggs, 50 Ala. 78. But right revives on reversal of judgment of conviction.—Ib.

5524 (4252) (777). **Same; appointment pro tem.**—When any solicitor is suspended, the court shall appoint a solicitor pro tem., who shall perform the duties of the office of solicitor, and receive the fees and emoluments thereof, from such appointment until the original order suspending the solicitor shall be set aside.

See note to preceding section.

5525 (4253) (778). **When order of suspension set aside.**—When it shall be known to the court that there is no indictment pending in the court in which such indictment was found, or in any court to which a cause may have been removed by change of venue, against a solicitor who has been suspended, the order suspending such solicitor shall be set aside.

5526 (4254) (779). **Shall not commence prosecution on own affidavit; exceptions.**—It shall not be lawful for a solicitor to commence a criminal prosecution by his own affidavit, except for an offense against his person or his property, or the affidavit be upon his personal knowledge of the commission of the offense charged, except for violation of the revenue laws of the state.

When prosecution will not be dismissed as being brought in violation of this statute.—Sale's case, 68 Ala. 530. Statute construed.—Ib.

Feb. 21, 1893, p. 918.

5527. Salary.—The solicitor for each judicial circuit shall be paid a salary of twenty-four hundred dollars per annum, in monthly installments, on the warrant of the auditor drawn upon the treasurer.

Ib.

5528. Commissions.—In addition to the salary provided for in the preceding section, each circuit solicitor shall be paid, at the end of each fiscal year, commissions on fees earned by him at any time prior thereto and actually collected and received into the state treasury during the preceding fiscal year, as follows: Thirty per cent. on the first thousand dollars, or any part thereof, over and above twenty-four hundred dollars; fifteen per cent. on the second thousand dollars, or any part thereof, over and above twenty-four hundred dollars, and ten per cent. on all over forty-four hundred dollars; and at the end of each fiscal year the auditor shall ascertain the amount of fees earned by the solicitor for each judicial circuit which have been actually received into the state treasury during the preceding fiscal year, including fees in penitentiary cases in which the other costs were paid by the state during such year; and if such receipts, as to any circuit, shall exceed the sum of twenty-four hundred dollars, the auditor shall draw his warrant on the treasurer, in favor of the solicitor, for the commissions on such excess as provided in this section. If it shall appear that the fees on which such commissions are allowed were earned by different solicitors of the same

circuit, the auditor shall, after notice to each of them, ascertain and draw warrants for the just and equitable proportion of each such solicitor.

5529. Fees of salaried solicitors paid into state treasury.—All fees which may be by law taxed as solicitors' fees against defendants on convictions secured by a solicitor who is paid a salary by the state, belong to the state, and, when collected, must be paid into the state treasury. Feb. 28, 1887, p. 161, §2.

5530. Commissions on fines and forfeitures to be paid into county treasury.—The five per cent. commissions which such salaried solicitors are entitled to receive on fines and forfeitures must, when collected, be paid into the county treasury to the credit of the fine and forfeiture fund.

5531. Solicitor must report fees within ten days after adjournment of court.—It is the duty of each solicitor who is paid a salary by the state, within ten days after the adjournment of any term of the court for which he is solicitor, to make and deliver to the clerk of such court and forward to the auditor, each, a certified statement showing the number and names of the persons convicted at such term of the court, the character of the offense charged, the date of the sentence and the amount of the solicitor's fee in each case. Feb. 28, 1889, p. 191, §1.

5532. On such statement auditor charges up fees to clerk.—Upon the receipt of such statement from the solicitor by the auditor, he must, in a suitable book to be kept for that purpose, charge up against the clerk of the court, the amount of the fees so certified to him by the solicitor; and such fees shall remain charged to such clerk until he shall pay the same into the state treasury and legally account therefor to the auditor. But if it shall be made to appear to the auditor by satisfactory proof that such fees or any part thereof cannot be collected, he shall allow such clerk credit for the amount of such uncollectible fees. Ib. §2.

5533. Clerk must make quarterly reports and payments.—At the end of each quarter of the fiscal year the clerk must report to the auditor and pay over to the treasurer all solicitors' fees by him collected; and for the collection and payment of such fees he may retain five per cent. commissions on the amount so collected and paid over, and the necessary expense of remitting such amount to the treasurer. Ib. §3.

5534. Annual statement of uncollected fees to be furnished solicitor.—The auditor must, as soon as practicable after the close of each fiscal year, furnish to each solicitor a certified statement of all fees remaining unpaid in his circuit; and such statement shall be prima facie evidence in any proceeding to collect such fees. Feb. 18, 1895, p. 1011, §1.

5535. Solicitor must proceed to collect fees.—Upon the receipt of such certificate the solicitor must institute proceedings for the collection of all such fees as remain unpaid; and any solicitor failing to do so forfeits to the state the sum of one hundred dollars, to be recovered on motion and ten days' notice by the attorney-general, in the circuit or city court of Montgomery. Ib. §§2, 4.

Ib. §3.

5536. Failure of clerk to report or remit collections.—Any clerk, who shall willfully or negligently fail for ten days after the end of any quarter to report to the auditor or pay to the treasurer all solicitors' fees collected by him during such quarter, less the commissions and expenses of remitting, as provided in this chapter, forfeits to the state five dollars for each and every day that he retains any of such fees, to be recovered of him, on motion and ten days' notice by the solicitor in the circuit court of the county of the residence of such clerk.

Feb. 28, 1887, p. 161, §4.

5537. Solicitors may appoint deputies in county courts.—The several solicitors may appoint deputy-solicitors to represent the state in the county courts, the deputy to hold office during the term of the solicitor, unless sooner removed by him.

Ib.

5538. Fees and commissions of deputy-solicitor; limit; residue goes to county.—The deputy-solicitor may collect and retain for his services the fees and commissions earned by him in the county court during the year, not to exceed five hundred dollars per annum; the residue of such fees and commissions must be paid into the county treasury to the credit of the fine and forfeiture fund.

5539. Deputy-solicitor must report to county treasurer; penalty for failure; duty of treasurer.—At the end of each year of his service the deputy-solicitor must make to the county treasurer an itemized statement, under oath, showing the fees and commissions collected by him during the preceding year; and if he fail to do so, the county treasurer must report the fact of such failure to the county court, whereupon a conditional judgment must be rendered against him for one hundred dollars in favor of the state, to be made absolute after notice to such deputy-solicitor, unless a good excuse is rendered.

CHAPTER 194.

STATUTES.

ARTICLE 1.—WHEN PENAL LAWS TAKE EFFECT. 5540.
2.—EFFECT OF REPEAL OR CHANGE OF LAW. 5541.

ARTICLE 1.

WHEN PENAL LAWS TAKE EFFECT.

5540 (3705) (4448) (3544, 3955). **When penal acts take effect.** No penal act shall take effect until thirty days after the adjournment of the general assembly at which such act may be passed, unless otherwise specially provided in the act.

See Henback's case, 53 Ala. 523; Taylor's case, 31 Ala. 383. Common-law rule.—Click's case, 2 Ala. 26. Statute fixing time of its effect repeals above section as to such statute.—Henback's case, supra; Olmstead v. Crook, 89 Ala. 228. What is a penal statute.—Ex parte Diggs, 52 Ala. 381. Penal statutes strictly construed, but not to defeat intention of legislature.—Reese's case, 73 Ala. 18; Walton's case, 62 Ala. 197. Legislature presumed to use words in their proper signification.—Thurman's case, 18 Ala. 276. Courts look less at words than at substance.—Thompson's case, 20 Ala. 54. Literal interpretation defeating purpose of statute, not adopted.—Ib. In construing repugnant statutes in Code, original statute consulted to ascertain legislative intent.—Steele's case, 61 Ala. 213. Enrolled bills control errors.—Marshall's case, 14 Ala. 411; Washington's case, 68 Ala. 85. Language, and not punctuation or technical grammatical construction, must control.—Danzey's case, 68 Ala. 296. Where words and terms have changed in meaning since the enactment.—Sike's case, 67 Ala. 80. When part only of statute unconstitutional; and when all fails because of defective part.—Vine's case, 67 Ala. 76; Powell's case, 69 Ala. 10; Walker's case, 49 Ala. 329; Ex parte Pollard, 40 Ala. 77. Rules for interpreting statutes.—See Huffman's case, 29 Ala. 40; O'Byrnes's case, 51 Ala. 25; Wetmore's case, 55 Ala. 198; Reese's case, 73 Ala. 18. Act to regulate the doing of business by foreign corporations in this state, and prescribing penalties for failure to comply with its provisions, is a penal act.—Ross v. N. E. Mortg. Security Co.—101 Ala. 362.

ARTICLE 2.

EFFECT OF REPEAL OR CHANGE OF LAW.

5541 (3706) (4449) (4151). **Repeal or change of law; what does not affect; election of new penalty.**—No repeal, revision, amendment, or alteration of any law shall in any manner affect any prosecution for an offense committed under the law so repealed, revised, amended, or altered, unless the repealing, revising, amending, or altering law shall otherwise expressly provide; but every such prosecution, whether begun before or after the enactment of such repealing, revising, amending, or altering law, is governed by the law under which the offense may be committed; but in cases where the penalty for the offense may have been altered, the defendant may elect to take the new penalty, but such election must be made before the case is submitted to the jury; nor shall the prosecution for the recovery of any penalty, or the enforcement of any forfeiture, be in any manner affected by the repeal of a statute, but such prosecution shall be carried on to final judgment in all respects as if such statute had not been repealed.

Amendatory statutes, their construction and effect under the constitution, and with reference to the original statute.—Bradley's case, 69 Ala. 318. Repeal and amendment by implication.—Washington's case, 72 Ala. 272; Jackson's case, 76 Ala. 26; Lyman's case, 45 Ala. 78. When statute merely changing mode of punishment will not repeal, by implication, the former statute in its operation on offenses committed prior to the new statute.—Miles's case, 40 Ala. 39; Moore's case, Ib. 49; Miller's case, Ib. 54; Stephen's case, Ib. 67; Wade's case, Ib. 74; Magruder's case, Ib. 347. Statute is repealed by a subsequent repugnant statute; also by a subsequent statute clearly intended to create the only rule that should govern.—George's case, 39 Ala. 675. Without the above enactment, the repeal of a statute exonerated from subsequent prosecution. Freeman's case, 6 Port. 372; Allaire's case, 14 Ala. 435; Jordan's case, 15 Ala. 746; Griffin's case, 39 Ala. 541; George's case, Ib. 677; Burt's case, Ib. 618. Does not apply to changes which only affect procedure.—South's case, 86 Ala. 617. Prosecution under repealed statute.—Ebb's case, 83 Ala. 84. Does not apply to ordinances of municipal corporations.—Barton v. Gadsden, 79 Ala. 495.

CHAPTER 195.

SUNDAY VIOLATIONS. 5542, 5543.

5542 (4045) (4443) (3614) (73). **Certain acts prohibited on Sunday; punishment.**—Any person, who compels his child, apprentice, or servant to perform any labor on Sunday, except the customary domestic duties of daily necessity or comfort, or works of charity; or who engages in shooting, hunting, gaming, card-playing, or racing on that day; or who, being a merchant or shopkeeper, druggist excepted, keeps open store on that day, must, for the first offense, be fined not less than ten, nor more than twenty dollars, and, for the second, or any subsequent offense, must be fined not less than twenty, nor more than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months; but the provisions of this section do not apply to the running of railroads, stages, or steamboats, or other vessels navigating the waters of this state, or any manufacturing establishment which requires to be kept in constant operation. (Form 86.)

All unnecessary shooting prohibited; such as to shoot at a dog in wantonness and mischief.—Smith's case, 50 Ala. 159. Constituents and proof of the offense of keeping open store.—Dixon's case, 76 Ala. 89. Evidence explaining a sale.—Ib. Store or shop must be kept open for purpose of traffic.—Snider's case, 59 Ala. 64. Word "shop" not equivalent to word "store."—Sparrenberger's case, 53 Ala. 481. Different sales are merely evidences of intent; do not require election by state.—Snider's case, 59 Ala. 64. Purpose for which store kept open, question for jury.—Ib. If a party bet at cards at a public place on Sunday he may be prosecuted for three offenses, but a conviction under one is a bar to the others.—McVay's case, 100 Ala. 113; O'Brien's case, 91 Ala. 29.

5543 (4046) (4444) (3615). **Holding public markets and trading therein on Sunday.**—Any person, who opens, or causes to be opened, for the purpose of selling or trading, any public market house or place on Sunday, or opens, or causes to be opened, any stall or shop therein, or connected therewith, or brings anything for sale or barter to such market or place, or offers the same for sale therein on that day, or buys or sells therein on that day (including live stock or cattle), must, on conviction, be punished as prescribed in the preceding section. Any place where people assemble for the purchase and sale of goods, wares and merchandise, provisions, cattle, or other articles, is a market house or place, within the meaning of this section.

CHAPTER 196.

TRADE, PUBLIC POLICY AND POLICE.

ARTICLE 1.—ILLEGAL TRADING IN FARM PRODUCTS. 5544, 5545.
2.—EMITTING AND CIRCULATING CHANGE-BILLS. 5546, 5547.
3.—CONCERNING PAWNBROKERS. 5548.
4.—ILLEGAL TOLLS, FREIGHTS AND FERRIAGES. 5549–5556.
5.—POOLS, TRUSTS AND COMBINES. 5557–5559.
6.—ILLEGAL AND FRAUDULENT DEALINGS IN FERTILIZERS. 5560–5565.
7.—SELLING OATS MIXED WITH JOHNSON-GRASS SEED. 5566.
8.—UNLAWFUL USE OF BOTTLES, SIPHONS, KEGS, ETC., BEARING STAMP OF ANOTHER. 5567–5570.
9.—ILLEGAL MEASURE OF OYSTERS. 5571.
10.—LAWS FOR THE PRESERVATION OF OYSTERS, FISH, GAME AND LIVE STOCK. 5572–5591.
11.—FAILING TO KEEP MARRIAGE RECORDS AND PERFORMING ILLEGAL CEREMONIES. 5592–5595.
12.—CONCERNING MUTUAL AID ASSOCIATIONS. 5596, 5597.
13.—LEVYING ON COUNTY PROPERTY. 5598.
14.—OBSCENE PRINTS AND LITERATURE. 5599, 5600.
15.—HISTORIES OF OUTLAWS. 5601.
16.—CONCERNING THE MILITARY. 5602, 5603.
17.—THREATS TO BURN BUILDINGS OR AGRICULTURAL PRODUCE. 5604.

ARTICLE 1.

ILLEGAL TRADING IN FARM PRODUCTS.

5544 (4141) (4369). **Trading in farm products between sunset and sunrise; exception.**—Any person, who buys, sells, receives, barters, or disposes of any cotton, corn, wheat, oats, peas, or potatoes, after the hour of sunset, and before the hour of sunrise of the next succeeding day, or any person, who in any manner moves, carries, conveys, or transports, except within the limits of the farm or plantation on which it is raised or grown, any seed-cotton between the hours of sunset and sunrise of the next succeeding day, must, on conviction, be fined not less than ten, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months; but this section shall not affect the right of municipal corporations to establish and regulate, under their charters, public markets within their limits, for the sale of commodities for culinary purposes, nor the right of any proprietor or owner of any plantation or premises to sell on such plantation or premises the necessary grain and provisions for the subsistence of man and beast for the night to traveling or transient persons, or for the use of agricultural laborers in his own employment on such plantation or premises; nor shall the provisions of this section apply to any person carrying seed-cotton to a gin for the purpose of having the same ginned.

Constitutionality of statute.—Davis's case, 68 Ala. 58. Want of knowledge or consent of owner of products not an element of this offense, and his knowledge of the act or consent thereto, when done by another, is no defense.—Gilliam's case, 71 Ala. 10. Instructions by principal to agent to buy farm products, presumptions; act and declaration of agent as evidence against principal. Russell's case, 71 Ala. 348. Sufficiency of indictment; may be in the alternative.—Russell's case, 71 Ala. 348. Necessary averments.—Ib. 348. See Grattan's case, Ib. 344; Davis's case, 68 Ala. 58.

5545 (4142). **Failure to apply farm produce to payment of lien for rent or advances.**—Any person, who knowingly takes or receives any cotton or other farm produce upon which there is a lien for rent or advances, or both, or the proceeds thereof, and who fails to apply the same to the payment of the rent, or the discharge of the lien, whether the same is in the hands of a third party or not, must, on conviction, be punished as if he had stolen the same.

ARTICLE 2.

EMITTING AND CIRCULATING CHANGE-BILLS.

5546 (4143) (4433) (3643) (101). **Emitting change-bills as money.**—Any officer or agent of any private corporation or association, or any other person, who makes, emits, signs, or countersigns, or causes or procures to be made, emitted, signed, or countersigned, without authority of law, any paper to answer the purposes of money, or for general circulation, must, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than one year. (Form 41.)

Norvell's case, 50 Ala. 174; Durr's case, 59 Ala. 24; Nelson's case, 82 Ala. 44; Tabler v. Sheffield L. I. & C. Co., 79 Ala. 377.

5547 (4144) (4434) (3644) (102). **Circulating such change-bills.** Any person, who passes or circulates in this state any paper issued without authority of law, to answer the purposes of money, must, on conviction, be fined not less than twenty, nor more than one hundred dollars. (Form 41.)

See citations to preceding section.

ARTICLE 3.

CONCERNING PAWNBROKERS.

Feb. 21, 1893, p. 1115, §3.

5548. Pawnbroker failing to keep public record, etc.—Any person, engaged in the business of pawnbroking, who fails to comply with any of the provisions of chapter 88 of this Code, must, on conviction, be fined not less than ten dollars and not more than one hundred dollars.

ARTICLE 4.

ILLEGAL TOLLS, FREIGHTS AND FERRIAGES.

5549 (4145). **Unlawful pooling of freights.**—Any officer, agent, or servant of a person or corporation operating a railroad, who aids in making or carrying out an agreement between railroads, commonly called a pool, for the division between themselves of the freight-carrying business of any place in this state, whereby trade is restrained by the establishment of extortionate rates and the prevention of free competition, unless such agreement has been approved by the railroad commissioners, must, on conviction, be fined not less than fifty, nor more than two hundred dollars.

5550 (4146). **Extortion by railroad.**—Any person or corporation operating a railroad, who commits extortion in transportation charges, as defined by law, must, on conviction, be fined not less than ten, nor more than five hundred dollars.

5551 (4147). **Reduction of regular rates by railroads.**—Any person or corporation operating a railroad, who makes, and any person who knowingly accepts, a lower transportation rate for person or freight than the published tariff, must, on conviction, be fined not less than ten, nor more than five hundred dollars.

5552 (4148). **Failure of railroad to publish freight rates at depots.**—Any person or corporation operating a railroad, who fails to post and keep posted at all freight-depots the tariff of rates for transporting freight, showing general and special rates for each class, must, on conviction, be fined not less than twenty, nor more than one hundred dollars.

5553 (4149) (1680) (1383) (1191). **Keeping toll-bridge or ferry without license.**—Any person, who keeps any ferry, toll-bridge, or causeway, for ferriage or toll, without license, must, on conviction, be fined not less than twenty, nor more than one hundred dollars, or imprisoned in the county jail, or sentenced to hard labor for the county, for not less than thirty days.

5554 (4150) (4400) (3746) (199). **Illegal toll by miller.**—Any person, who, being the owner or keeper of any public mill, or the agent or servant of such owner or keeper, takes or receives for grinding corn, wheat, or any other kind of grain, either as toll, or by sale or exchange, more than one-eighth of the grain ground or brought to the mill to be ground, must, on conviction, be fined not less than ten, nor more than one hundred dollars.

5555 (4151) (4401) (3747) (200). **Illegal toll by bridge or turnpike companies.**—Any person, who, being or acting as an officer, agent, servant, or employe of any turnpike company, macadamized road company, or other incorporated road or bridge company, takes, receives, or demands any greater charge or toll for travel or passage over such road or bridge than is authorized by the charter of such company, or, if the charter does not specify the amount of toll to be charged or taken, fixes, prescribes, takes, receives, or demands any

unreasonable charge or toll, to be determined by the jury, must, on conviction, be fined not more than one hundred dollars.

5556 (4152) (1689) (1392) (1199). **Excessive tolls; penalty.** Any keeper of any public ferry, toll-bridge, or causeway, who demands or receives from any person a higher rate of toll than is prescribed by the court of county commissioners, is guilty of a misdemeanor.

Lewis's case, 41 Ala. 414.

ARTICLE 5.

POOLS, TRUSTS AND COMBINES.

Feb. 7, 1891, p. 438, §§2, 3.

5557. Forming pools or combinations to regulate the quantity or price of products.—Any person or corporation, who engages or agrees with other persons or corporations, or enters into, directly or indirectly, any combination, pool, trust, or confederation, to regulate or fix the price of any article or commodity to be sold within this state for speculation, or any person or corporation who enters into, becomes a member of, or party to, any pool, agreement, combination, or confederation to fix or limit the quantity of any article or commodity to be produced, manufactured, mined, or sold in this state, must, on conviction, be fined not less than five hundred, nor more than two thousand dollars.

Ib. §§2, 3.

5558. Combinations to control corporations with intent to fix the price or production of commodities.—Any corporation chartered under the laws of this state, or any officer, stockholder, agent, or employe of any such corporation, which enters into any combination with any other corporation or person with the intent to place the management or control of any such corporation in the hands of another corporation or person and thereby limit or fix the price, or restrict or diminish the production, manufacture, sale, use, or consumption of any article of commerce, must, on conviction, be fined not less than five hundred, nor more than two thousand dollars.

Ib. §4.

5559. Preceding two sections given in special charge to grand juries.—The preceding two sections must be given in special charge to the grand jury.

ARTICLE 6.

ILLEGAL AND FRAUDULENT DEALINGS IN FERTILIZERS.

5560 (4153). **Dealing in fertilizers without submitting statement to commissioner.**—Any person, who manufactures or exchanges, sells, or offers for sale or exchange, any fertilizer, without first sub-

mitting the statement required by law to the commissioner of agriculture, must, on conviction, be fined not more than five hundred dollars for each offense.

5561 (4154). **Selling fertilizers without attaching proper tags.** Any person, who sells, exchanges, or offers for sale or exchange, any bag, package, or barrel of fertilizer, which has not been tagged as provided by law, must, on conviction, be fined not less than fifty dollars for each offense.

See note to section 386 (141).

5562 (4155). **Using more than once, and counterfeiting tags, etc.**—Any person, who counterfeits the tag prepared by the commissioner of agriculture, or who knowingly uses a counterfeit of such tag, or who uses a second time a genuine tag, or who uses the tag of a former season, must, on conviction, be fined one hundred dollars.

5563 (4156). **Making false certificate of analysis of fertilizer.** Any chemist, who willfully makes a false certificate of the analysis, or of the ingredients of any fertilizer, intended or offered for sale or exchange, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than five years.

5564 (4157). **Dealing in commercial fertilizers without license.** Any person, who sells or exchanges fertilizers, without having obtained a license from the commissioner of agriculture, as provided by law, must, on conviction, be fined not less than one hundred dollars for each offense.

5565 (4158). **Fraud in manufacture, sale, or exchange of fertilizer.**—Any person, who commits a fraud in the manufacture, sale, or exchange of any fertilizer, or of any of the ingredients of a fertilizer, must, on conviction, be fined not less than one hundred dollars for each offense.

ARTICLE 7.

SELLING OATS MIXED WITH JOHNSON-GRASS SEED.

5566. Selling oats mixed with seed of Johnson grass.—Any person, who knowingly sells oats for seed purposes which are mixed with the seed of Johnson grass, or sorghum halepense, or Means grass, without making known to the purchaser the fact of such mixture, must, on conviction, be fined not less than ten, nor more than one hundred dollars. Dec. 14, 1894, p. 160.

ARTICLE 8.

UNLAWFUL USE OF BOTTLES, SIPHONS, KEGS, ETC., BEARING STAMP OF ANOTHER.

5567. Marks or devices for bottles, boxes, kegs, etc., may be registered.—Any person or corporation, engaged in manufacturing, bot- Feb. 14, 1891, p. 700, §1.

tling, or selling soda-water, mineral or aerated waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, lager-beer, weiss beer, white beer, or other beverages in bottles, siphons, fountains, or kegs, with his or its name, or other mark or device branded, stamped, engraved, etched, blown, impressed, or otherwise produced upon such bottles, siphons, fountains, or kegs, or on the boxes used in such business, may file in the office of the judge of probate of the county in which his or its principal place of business is situated, and also in the office of the secretary of state, a description of the name, mark or device so used, and cause such description and a notice of its filing to be printed once a week for three successive weeks in a newspaper published in the county in which such notice is filed.

Ib. §2. **5568. Refilling, dealing in, or removing marks upon bottles, boxes, kegs, etc., which have been registered.**—Any person or corporation, who fills with soda-water, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, beer, small beer, lager-beer, weiss beer, white beer, or other beverages, or with medicines, compounds or mixtures, any bottle, box, siphon, fountain, or keg, marked or distinguished by any name, mark, or device, of which a description shall have been filed and published as provided in the preceding section, or who defaces, erases, obliterates, covers up, or otherwise removes or conceals any such name, mark, or device, or who sells, buys, gives or receives, or otherwise disposes of, or traffics in the same without the written consent of, or unless the same shall have been purchased from, the person or corporation whose mark or device shall be upon the bottle, box, siphon, fountain, or keg so filled, trafficked in, used, or dealt with, must, on conviction, be punished for the first offense by imprisonment in the county jail, or at hard labor for the county, for not less than ten days nor more than one year, or by a fine of fifty cents for each such bottle, box, syphon, fountain, or keg so filled, sold, used, disposed of, bought, or trafficked in, or by both such fine and imprisonment; and for each subsequent offense, by imprisonment for not less than twenty days nor more than one year, or by a fine of not less than one nor more than five dollars for each such bottle, box, siphon, fountain, or keg so filled, sold, used, disposed of, bought or trafficked in, or by both such fine and imprisonment, at the discretion of the jury.

Ib. §3. **5569. Possession or use of bottles, boxes, etc., presumptive evidence of guilt.**—The use by any person or corporation, other than the person or corporation whose name, mark, or device may be, or may have been, upon the same, without the written consent of, or purchase from, the owner, of any bottle, box, siphon, fountain, or keg, a description of the name, mark, or device whereon shall have been filed and published as provided in this article, for the sale of soda-water, mineral or aerated water, porter, ale, cider, ginger ale, milk, cream, beer, small beer, lager-beer, weiss beer, white beer, or other beverages, or any article of merchandise, medicines, compounds, or preparations, or for the furnishing of such similar beverages to customers; or the buying, selling, using, disposing of, or

trafficking in, any such bottles, boxes, siphons, fountains, or kegs, by any person or corporation other than the person or corporation owning the name, mark, or device thereon of such owner, without his written consent; or the having by any junk-dealer, or dealer in second-hand articles, possession of any such bottles, boxes, siphons, fountains, or kegs, without the written consent of the owner, shall be presumptive evidence of the unlawful use or purchase of, or traffic in, such bottles, boxes, siphons, fountains, or kegs.

5570. When search-warrant issued for discovery of bottles, etc. Ib. §4 Whenever any person or corporation, or his agent, shall make oath before any justice of the peace that he has reason to believe and does believe that any of his bottles, boxes, siphons, fountains, or kegs, a description of the name, marks, or devices whereon has been filed and published as provided in this article, are being unlawfully used or filled, or had by any person or corporation manufacturing or selling soda, mineral or aerated waters, porter, ale, cider, ginger ale, milk, cream, small beer, lager-beer, weiss beer, white beer, or other beverages, or that any junk-dealer or dealer in second-hand articles, vender of bottles, or that any person or corporation has any such bottles, boxes, siphons, fountains, or kegs, in his possession, or secreted in any place, such justice of the peace must issue a search-warrant to discover and seize such property, and thereupon such proceedings must be had as in other cases in which search-warrants have issued.

ARTICLE 9.

ILLEGAL MEASURE OF OYSTERS.

5571 (4161). **Illegal measurement in buying and selling oysters.** Dec. 10, 1892, p. 27, §9. Any person, who, on buying or selling oysters in the shell by measure, uses any other than the box measure of the shape and dimensions required by law, must, on conviction, be fined not less than ten, nor more than one hundred dollars.

ARTICLE 10.

LAWS FOR THE PRESERVATION OF OYSTERS, FISH, GAME AND LIVE STOCK.

5572 (4717). **Non-residents prohibited from taking and catching oysters; forfeiture of boat, etc.**—It is unlawful for any person, not a resident of this state, to take or catch oysters, in any manner, in the waters within the jurisdiction of this state; and any person violating the provisions of this section shall forfeit not less than fifty, nor more than one hundred dollars, to be recovered in the mode

hereinafter prescribed; and the boat, vessel, or craft employed in such unlawful business, with her tackle, apparel, furniture and appurtenances, shall be forfeited to the state.

State v. Harrub, 95 Ala. 176.

5573 (4718). **Who considered non-resident; burden of proof.** No person shall be considered a resident of this state, within the meaning of the term used in this article, who does not at the time reside in, and who shall not have resided in this state for twelve months next preceding the time when any offense with which he is charged may have been committed; and, in all questions arising as to residence under this article, the onus probandi shall rest on the defendant.

5574 (4719) (1609, 1611) (1301, 1303) (1121, 1123). **Taking oysters with certain instruments prohibited; presumptive evidence of guilt.**—It is not lawful to take or catch oysters in any of the waters of this state, with or by a scoop, rake, drag, or dredge, or by the use of any other instrument than the oyster-tongs heretofore in general use for taking oysters; and all persons violating the provisions of this section shall forfeit fifty dollars, to be recovered in the mode hereinafter prescribed, and also forfeit to the state the boat or vessel employed in such unlawful business, her tackle, apparel and furniture; and the finding on board the boat or vessel a scoop, rake, or other instrument forbidden by this section, is presumptive evidence of guilt.

5575 (4720) (1610) (1302) (1122). **Proceedings for violation of this article.**—The sheriffs of the several counties bordering on the waters of this state are specially charged with the execution of this law; and it is their duty, if they know, or are credibly informed of the violation of the provisions of this article, to take with them such power as may be necessary, and to seize the boat, vessel, or craft, her tackle, apparel, furniture and appurtenances, and arrest all persons on board the same so unlawfully engaged, and carry them before a justice of the peace of his county.

5576 (4721) (1616) (1308) (1128). **When sheriff may summon posse comitatus; same penalty as for resisting process.**—If resistance be apprehended by the sheriff in the execution of this law, he may summon to his aid the posse comitatus of his county, armed and equipped as the occasion may require; and may press into his service any steamboat or other vessel, not actually engaged in carrying the public mail, at the risk and expense of the state; and if resistance is made by the boatmen of the boat or vessel attempted to be seized, such resistance is punishable in the same manner as is now provided by law for resistance to process.

5577 (4722) (1611) (1303) (1123). **Justice to try cause and summon witnesses.**—Upon information given to the justice of the peace of the violation of the first or third section of this article, he may take jurisdiction of the complaint, and cause such witnesses to be summoned as the accused or sheriff may require.

5578 (4723) (1612) (1304) (1124). **Justice to impose fine and to condemn boat, vessel, etc.**—If, upon the hearing, the offense is established, the justice must fine each of the offenders as is provided for in the section of this article which is violated, and, if the fine is not paid, must commit him or them to jail; and must also condemn the boat, vessel, or craft, together with her tackle, apparel, furniture and appurtenances, forfeited to the state, and direct that it be sold; and adjudge the cost of the proceeding before him to be paid by the accused. If he is not satisfied from the proof that the accusation is established, he must discharge the accused, and release the boat, vessel, or craft, and other property seized.

5579 (4724) (1613) (1305) (1125). **Proceedings conducted in name of state; appeal.**—The proceedings before the justice must be carried on in the name of the State of Alabama, and the parties condemned, or either of them, may appeal from the sentence of condemnation and fine, at any time within ten days from the rendition thereof, to the circuit court of the county in which the proceeding is had, or, if within the county of Mobile, to the city court of Mobile, where the cause must be tried de novo and prosecuted by the solicitor; and if the judgment is affirmed, costs must be adjudged on behalf of the state, and the solicitor be allowed a tax fee of fifty dollars.

5580 (4725) (1614) (1306) (1126). **When sale of boat stayed on appeal; judgment if case affirmed.**—The sale of the boat or vessel is not stayed by an appeal, unless the appellant enters into a bond, in a penalty of twice the value of the boat or vessel, her tackle, etc., the value to be determined by the justice, with sufficient surety, payable to the State of Alabama, with condition to prosecute the appeal to effect. The bond must be returned, with the other papers in the cause, to the appellate court; and, if the judgment of the justice is affirmed, judgment shall be rendered against all the obligors therein for the amount of the fines not paid, and for the value of the boat, her tackle, etc., to be ascertained by proof, as well as the costs of the appellate court.

5581 (4726) (1615) (1307) (1127). **Sale made as under execution; proceeds, how disposed of.**—If the judgment is not stayed by the execution of bond as aforesaid, the sheriff must, after the expiration of ten days, advertise and sell the boat or vessel, her tackle, etc., in the same manner as sales under execution; and, after deducting all necessary expenses of the seizure and costs of sale, of which he shall render an account on oath, pay the residue to the county treasurer of the county in which the seizure is made, who may allow him ten per centum thereon for his trouble. The money thus received by the treasurer must be held for the same purposes as those arising from fines and forfeitures.

5582 (4162) (4438) (3752) (205). **Catching oysters otherwise than with tongs.**—Any person, who takes or catches oysters by using any other implement or instrument than the oyster-tongs heretofore generally used for that purpose, is guilty of a misdemeanor.

Dec. 10, 1892, p. 27 §22.

5583 (4163) (4439). **Violating oyster regulations.**—Any person, who violates any of the provisions of chapter 84 of this Code must, on conviction, be fined not less than fifty, nor more than one hundred dollars; and for each subsequent offense, not less than two hundred, nor more than five hundred dollars, and may also be imprisoned in the county jail for thirty days.

State v. Harrub, 95 Ala. 176.

5584 (4164). **Taking and catching oysters by non-residents.** Any person, not being a resident of this state, who takes or catches oysters in any manner in the waters within the jurisdiction of this state, is guilty of a misdemeanor.

State v. Harrub, 95 Ala. 176.

5585 (4165) (4441) (1308) (1128). **Resistance of sheriff arresting any person or seizing boat violating oyster regulations.**—Any person, who willfully opposes or resists the sheriff, or person aiding the sheriff in the performance of his duty, under proceedings to enforce the law for the preservation of oysters, in arresting, or attempting to arrest, any person engaged in the unlawful taking of oysters in any of the waters of this state, or in seizing, or attempting to seize, any boat or vessel, or the tackle or furniture of such boat or vessel, used in such unlawful taking, must, on conviction, be fined not less than fifty, nor more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

5586 (4166) (4442). **Poisoning or taking fish by nets in Tennessee river or tributaries.**—Any person, who takes fish by net, or poisons fish in the Tennessee river, or its tributaries, must, on conviction, be fined not more than fifty dollars; one-half of the fine shall go to the informer, and the balance to be paid into the common-school fund of the township in which the offense was committed, for the benefit of the common schools of such township; but the word "net" in this section shall not include seine.

5587 (4167). **Obstructing and preventing fish from running up rivers or creeks.**—Any person, who, by means of dams, traps, or other obstructions, prevents the passage of fish up the waters of any river or creek in this state, must, on conviction, be fined not more than one hundred dollars; but nothing in this section shall be so construed as to prevent the introduction of traps or other means of catching fish in such rivers or creeks, which will permit fish to pass through or around the same.

5588 (4168) (4241) (3753) (206). **Poisoning stream, or using explosive substance, to catch fish.**—Any person, who takes, catches, kills, or attempts to take, catch, or kill, fish in any waters of the state, by poisoning the stream or body of water in which they are found, or by the use of any poisonous substance put in the water, or by the use of fishberries, lime, giant powder, dynamite, gunpowder, or any other explosive substance, must, on conviction, be fined not

less than ten, nor more than one hundred dollars; one-half of which shall be paid to the informer.

5589 (4169) (4406) (3749) (202). **Hunting wild hogs.**—Any person, who, without first giving notice to at least three freeholders in the neighborhood, hunts, catches, or kills wild hogs unmarked, with dog or gun, must, on conviction, be fined not less than ten, nor more than one hundred dollars.

5590 (4170) (4407) (3750) (203). **Fire-hunting.**—Any person, who, in the night-time, hunts deer by fire, and with a gun, must, on conviction, be fined not less than ten, nor more than one hundred dollars.

5591 (4171) (4405). **Permitting sheep-killing dogs or hogs to run at large.**—Any person, who, owning or having in his possession, or under his control, any dog or hog known to worry or kill sheep, domestic fowls, or goats, who suffers such dog or hog to run at large, must, on conviction, be fined not less than five, nor more than fifty dollars.

ARTICLE 11.

FAILING TO KEEP MARRIAGE RECORDS AND PERFORMING ILLEGAL CEREMONIES.

5592 (4172) (4429) (2343) (1954). **Failure of judge of probate to make record.**—Any judge of probate, who fails for more than five days after any marriage license issued by him has been returned by the officer, minister, or other person solemnizing the marriage, to record the same, or to record the certificate of the celebration of the marriage, or to record any consent required by law to be given before issuing a marriage license, is guilty of a misdemeanor.

5593 (4173) (4430) (2345) (1956). **Marrying parties under age, or within prohibited degree.**—Any person, solemnizing the rites of matrimony, with the knowledge that either party is under the age of legal consent, or within the degrees prohibited by law, must, on conviction, be fined not less than one thousand dollars.

5594 (4174) (4431) (2346) (1957). **Certificate of marriage to be returned, etc.**—Any judge, minister of the gospel, justice of the peace, or other person uniting together persons in matrimony, or any clerk or keeper of the minutes of a religious society, celebrating marriage by the consent of the parties, before the congregation, who fails to return a certificate thereof to the judge of probate, as required by law, is guilty of a misdemeanor.

5595 (4175) (2684) (2349) (1960). **Solicitors to be notified of offenses.**—It is the duty of the judge of probate to give notice to the solicitor of all offenses under this article.

ARTICLE 12.

CONCERNING MUTUAL AID ASSOCIATIONS.

5596 (4159). **Reports of mutual aid associations.**—Any officer or agent of a mutual aid association, as defined by law, whose duty it is to make the annual report to the auditor, or designate the principal place of business, or agent for service of process of such association, as required by law, and who fails so to do, or who makes a false report, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars, or imprisoned in the county jail for not less than ten days, nor more than one year, one or both, at the discretion of the court.

5597 (4160). **Agent of a mutual aid association.**—Any person, who acts as solicitor, collector, or otherwise as agent of a mutual aid association, as defined by law, knowing the same not to have complied with the provisions of this Code relating specially to such associations, must, on conviction, be fined not less than one hundred, nor more than five hundred dollars, or imprisoned in the county jail for not less than ten days, nor more than one year, one or both, at the discretion of the court.

ARTICLE 13.

LEVYING ON COUNTY PROPERTY.

5598 (4176) (4421). **Levying on court-house or other county property.**—Any sheriff, or other officer, who levies upon any court-house, poorhouse, or other property belonging to any county, must, on conviction, be fined not less than one thousand dollars, and imprisoned in the county jail for not less than twelve months.

ARTICLE 14.

OBSCENE PRINTS AND LITERATURE.

5599 (4029) (4201). **Posting or leaving obscene picture, writing, or printing.**—Any person, who willfully posts up or leaves any obscene or vulgar picture, placard, writing, or printed matter about or near to any church, dwelling, school, academy, or a public highway, must, on conviction, be fined not less than ten, nor more than fifty dollars.

5600 (4030). **Introducing, advertising, or selling obscene literature.**—Any person, who brings, or causes to be brought, into this state for sale, or advertises, or prints, or sells, or offers to sell, or re-

ceives subscription for any indecent or obscene book, pamphlet, print, picture or paper, must, on conviction, be fined not less than fifty, nor more than one thousand dollars.

ARTICLE 15.

HISTORIES OF OUTLAWS.

5601. Printing, publishing, or selling history of outlaw.—Any person, who shall print, publish, sell, offer for sale or otherwise dispose of any book, pamphlet or tract containing a history of any outlaw, must, on conviction, be fined not less than twenty-five dollars, nor more than five hundred dollars, one-half of the fine to be paid to the informer. This section does not apply to standard works. Dec. 14, 1894, p. 161.

ARTICLE 16.

CONCERNING THE MILITARY.

5602 (4177). **Wearing military insignia of rank without being commissioned.**—Any person, not being duly commissioned, who wears the insignia of rank of any officer of the Alabama state troops, must, on conviction, be fined not less than fifty dollars.

5603. Unauthorized military organizations.—Any two or more persons, whether with or without uniform, who associate, assemble or congregate together by or under any name in a military capacity for the purpose of drilling, parading or marching at any time or place, or otherwise take up or bear arms in any such capacity, without the authority of the governor, must, on conviction, be fined not more than one thousand dollars. This section does not apply to any school or college where military tactics are taught, nor to the order of Knights Templar, Knights of Pythias, or Patriarchs Militant. Feb. 28, 1889, p. 82.

ARTICLE 17.

THREATS TO BURN BUILDINGS OR AGRICULTURAL PRODUCE.

5604. Threatening to burn house, store, shop, barn or other building, or any agricultural produce.—Any person, who, knowing the contents thereof, sends, delivers or causes to be received by another, or posts on the premises of another, any letter or writing, or any verbal message, threatening to burn, injure or destroy, conditionally or unconditionally, any house, store, shop, barn, gin or other building, or any house or pen containing corn or cotton or other agricultural produce, or any agricultural produce, whether in or under any building or not, must, on conviction, be imprisoned in the penitentiary for not less than two, nor more than ten years.

CHAPTER 197.

TREASON. 5605.

5605 (3724) (4100) (3547) (7). **Punishment of treason.**—Every one who commits the crime of treason against the state must, on conviction, suffer death, or imprisonment in the penitentiary for life, at the discretion of the jury trying the same.

CHAPTER 198.

TRESPASS.

ARTICLE 1.—TRESPASS AND INJURY TO REALTY. 5606-5616.
2.—BURNING WOODS AND TURPENTINE FORESTS. 5617-5619.
3.—INJURING AND DEFACING BUILDINGS, STRUCTURES, FENCES, BOATS, MILL-DAMS, BOOMS, BRIDGES, ETC., AND OTHER OFFENSES CONCERNING PROPERTY. 5620-5627.

ARTICLE 1.

TRESPASS AND INJURY TO REALTY.

As amended Dec. 3, 1896, p. 34.

5606 (3874) (4419, 4420) (3556, 3564) (16, 24).—**Trespass after warning.**—Any person, who, without legal cause or good excuse, enters into the dwelling-house, or on the premises of another, after having been warned, within six months preceding, not to do so; or any person who, having entered into the dwelling-house or on the premises of another without having been warned within six months not to do so, and fails or refuses, without legal cause or good excuse, to immediately leave on being ordered or requested to do so by the person in possession, his agent or representative, must, on conviction, be fined not more than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months.

What acts covered by the statute.—McLeod v. McLeod, 73 Ala. 42. **Purpose of statute** and constituents of offense.—Watson's case, 63 Ala. 19. **Premises** means any real estate, etc.; includes pasture more than mile from dwelling-house.—Sandy's case, 60 Ala. 18. Prosecutor must have **actual or constructive possession.**—Bohannon's case, 73 Ala. 47; Watson's case, 63 Ala. 19. What is "**legal cause**" **or** "**good excuse**"; burden of proof on defense.—Owens's case, 74 Ala. 401. **Warning** not to enter may be verbal or written.—Watson's case, 63 Ala. 19. Sufficiency of such warning.—Owens's case, 74 Ala. 401; Sherman's case, 105 Ala. 115. Copy of warning, if in writing, sufficient evidence without notice to produce original.—Watson's case, 63 Ala. 19. When deeds to land **competent evidence.**—Bohannon's case, 73 Ala. 47. **Legal advice** no defense. Watson's case, 63 Ala. 19. Prosecutor a **competent witness** (overruling, on this point, Northcot's case, 43 Ala. 330).—Daniel's case, 60 Ala. 56; Bohannon's case, 73 Ala. 47. **Indictment** need not particularly describe premises or alleged venue.—Watson's case, 63 Ala. 19. Sufficiency of description of premises in notice of warning, and indictment.—Owens's case, 74 Ala. 401. **Right to**

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Feb. 18, 1897, p. 1256.

5607. Trespass by cutting timber on lands of another with intent, etc.—Any person, who knowingly enters upon the land of another and cuts down any wood or timber growing thereon, with intent to remove and appropriate the same to his own use, shall, on conviction, be fined not more than two hundred dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months; and the fine in such case goes to the injured party.

Feb. 21,

5608. Going back into possession of real estate after dispossession under legal process.—Any person, or his privy, who, having been dispossessed of any real estate by an officer under legal process from any court having jurisdiction of the subject-matter, goes back into the possession of such real estate by force or otherwise, or who, having regained possession of such real estate, holds the same by force or threats, without having been restored to the possession of such real estate by an order of a court of competent jurisdiction, shall, on conviction, be fined not less than two hundred, nor more than one thousand dollars, and imprisoned in the county jail for not less than six months; and one-half of the fine shall go to the person for whose benefit the writ of possession is issued.

Feb. 4, 1891, p. 339.

5609. Trespass upon the lands of the state.—Any person, who knowingly and willfully enters upon the lands of the state and cuts any timber, or cultivates such land, or otherwise appropriates the same to any private use without lawful authority, must, on conviction, be fined not less than one hundred dollars, and may also be imprisoned in the county jail for not more than thirty days; and this section must be given in special charge to the grand juries.

5610 (3877) (4416) (594, 595) (525, 526). **Trespass on school lands; disposition of fine.**—Every trespasser on school lands must, on conviction, be fined not less than three times the amount of the injury occasioned by such trespass; and the fine shall be added to the principal of the school fund of the township.

5611 (3880). **Trespass on state capitol grounds.**—Any person, who turns a horse or other animal of any kind to graze upon the grounds of the state capitol, must, on conviction, be fined not more than twenty dollars.

5612 (3875) (4417, 4420) (3736, 3738) (189, 191). **Trespass on lands by cutting down trees, etc.; severing and taking property from freehold.**—Any person, who willfully and maliciously commits

any trespass on the lands of another, by cutting down or destroying any wood or timber growing thereon, or by severing from the freehold any produce thereof, or any property or thing thereto attached; or any person, who severs and carries away from the freehold any property or thing thereto attached under such circumstances as would render the trespass a larceny, if the thing severed and carried away were personal property, must, on conviction, be fined not more than two hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months; and the fine goes to the injured party.

The act must be willful and malicious; certain facts examined and held not to justify inference of malice.—Pippen's case, 77 Ala. 81. See also Johnson's case, 61 Ala. 9; McCord's case, 79 Ala. 269; Langston's case, 96 Ala. 44.

5613 (3876) (4425) (3742) (195). **Trespass by cutting down shade-trees, shrubs, etc.**—Any person, who maliciously, or for the purpose of injuring an individual, or the public, cuts down, destroys, or injures any trees or shrubs, planted or preserved for shade or ornament in any public street or square, or in any yard or grounds, must, on conviction (unless the trees or shrubs cut down or injured belong to him), be fined not less than fifty, nor more than two hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months.

As amended Feb. 28, 1889, p. 97.

5614 (3878) (4414). **Trespass by allowing stock to run at large under common fence.**—Any one of several persons occupying or cultivating lands under a common lawful fence, who turns stock of any kind into such inclosure, or knowingly suffers such stock to go at large therein, without the consent of all the persons owning or cultivating such lands, must, on conviction, be punished by a fine of not less than five, nor more than fifty dollars, and also the amount of damages inflicted by the stock, which damages shall be held as a part of the penalty imposed by the court, and shall go to the party injured.

Mays's case, 89 Ala. 37; Cole's case, 72 Ala. 216. (Statute materially changed since these decisions.)

5615 (3879) (4415). **Same; disposition of stock in default of payment of penalty.**—Whenever a conviction shall be had under the preceding section, unless the full amount of the penalty is immediately paid, it shall be the duty of the sheriff, or other officer charged with the execution of the judgment of the court, to seize and hold the stock committing the trespass, and, after giving five days' notice, by posting at three or more public places in the neighborhood, to sell the same, and out of the proceeds to collect the amount of such penalty and costs; and the surplus shall be paid to the owner of such stock.

5616 (3881). **Trespass on lands, by cutting or boxing pine-trees for turpentine.**—Any person, who knowingly and willfully, and without the consent of the owner, enters upon the lands of any person or corporation, or upon the lands belonging to the state, and cuts, girdles, or boxes any pine-tree for the purpose of obtaining crude turpentine, must, on conviction, be fined not more than five

hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

ARTICLE 2.

BURNING WOODS AND TURPENTINE FORESTS.

5617 (3882) (4426) (3743) (196). **Burning woods willfully.**—Any person, who willfully sets fire to the woods or forest on uninclosed lands not belonging to himself, or willfully causes fire to be communicated to such woods or forest (except during the months of February and March), must, on conviction, be fined not less than ten, nor more than two hundred dollars.

5618 (3883) (4427) (3744) (197). **Burning pine forest willfully.** Any person, who willfully sets fire to any pine forest which is used for the purpose of procuring turpentine, with the intent to injure or destroy the same, must, on conviction, be fined not less than one hundred, nor more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

5619 (3884) (4428) (3745) (198). **Burning turpentine and other forest negligently.**—Any person, who negligently causes fire to be communicated to any pine forest which is used for the purpose of procuring turpentine, or to any forest belonging to another, and thereby injures or destroys the same, must, on conviction, be fined not less than fifty, nor more than two hundred dollars.

ARTICLE 3.

INJURING AND DEFACING BUILDINGS, STRUCTURES, FENCES, BOATS, MILL-DAMS, BOOMS, BRIDGES, ETC., AND OTHER OFFENSES CONCERNING PROPERTY.

5620 (3885) (4412, 4420) (3734, 3738) (187, 191). **Injuring or defacing public or private buildings, or fences thereof.**—Any person, who willfully injures or defaces any church, or building belonging to the state, or to any county, city, town, or private person, or writes or draws figures, letters, or characters on the walls thereof, or on the fences or inclosures thereof, must, on conviction, be fined not less than ten, nor more than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months; and the fine goes to the injured party.

5621 (3886) (4418, 4420) (3737, 3738) (190, 191). **Injuring water-dams, bridges, canals, road-gates, etc.**—Any person, who will-

fully injures any mill-dam, or other dam to create water-power, or any embankment necessary to support such dam, or willfully removes, injures, or destroys any lock, bank, culvert, aqueduct, or water-weir of any canal, or wantonly obstructs or hinders the free use or navigation of any canal, or wantonly opens any lock-gate, puddle-gate, culvert-gate, or water-gate of any canal, or willfully injures or destroys, otherwise than by burning, any public bridge, toll-bridge, causeway, turnpike-gate, or other gate erected on any road by authority of law, must, on conviction, be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months; and the fine goes to the injured party. (Form 35.)

Sufficiency of indictment for destroying public bridge under this section. Owens's case, 52 Ala. 400. Destroying a bridge to allow passage of a raft, when admissible as an excuse.—Ib. What no defense.—Ib.

Feb. 21, 1893, p. 1120.

5622. Trespass after warning on booms, bulkheads, or piles, erected or maintained by riparian proprietors.—Any person, who, having been warned within the twelve months next preceding by the owner or proprietor not to do so, trespasses upon any boom, bulkhead, or piles, lawfully erected or maintained in any of the waters of this state by any riparian owner or proprietor, by fastening any boat or other thing thereto, or by making any other use thereof, without first having obtained the consent of such owner or proprietor, or any person who continues to make such use of any such boom, bulkhead, or piles, after being warned by the owner or proprietor thereof to discontinue the same, must, on conviction, be fined not less than ten nor more than one hundred dollars for each day he continues to make such use of such boom, bulkhead, or piles; and one-half of the fine must go to the owner or proprietor thereof.

5623 (3887) (4424) (3741) (194). **Injuring telegraph line or post.**—Any person, who willfully cuts, pulls down, destroys, or in any manner injures any telegraph or telephone line, or any post or part thereof, must, on conviction, be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months.

5624 (3888) (4413, 4420) (3735, 3738) (188, 190). **Maliciously or negligently breaking or destroying fences.**—Any person, who unlawfully, maliciously, or negligently destroys, throws down, or breaks any fence or inclosure of another, and fails immediately to rebuild or repair the same, must, on conviction, be fined not less than twenty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months; and the fine goes to the injured party.

Does not apply to fence on defendant's land, though built by other party, and thought to be on builder's land.—Wheeler's case, 109 Ala. 56. Does not apply to partition fence.—Ib. Has reference only to fences in which defendant has no property right.—Ib.; Hill's case, 104 Ala. 64. "Unlawfully, maliciously

and negligently" defined.—Wheeler's case, 109 Ala. 56. Fence need not be "lawful" fence.—Hill's case, 104 Ala. 64. Ownership of fence is properly laid in tenant who is entitled to use thereof.—Ib. It is a defense that defendant threw down the fence to take out his own cattle, unlawfully detained.—Ib. Affidavit need not aver failure to repair break.—Brazleton's case, 66 Ala. 96. If the break is immediately repaired, it is a full defense.—Hill's case, 104 Ala. 64.

5625 (3889) (4413) (3735) (188). **Injuring, breaking, or taking boat from its mooring.**—Any person, who unlawfully or maliciously injures, breaks, cuts off, or carries away from its mooring or landing any ferry-boat, flatboat, canoe, or other vessel, the property of another, must, on conviction, be fined not less than twenty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months; and the fine goes to the injured party.

5626 (3890) (4422) (3739) (192). **Removing or destroying boundary marks, monuments, etc.**—Any person, who willfully removes or destroys any monument or post, or cuts down, removes, or destroys any tree, or defaces, or alters the marks made on such monument, post, or tree, which monument, post, or tree was erected or used to designate the corner or any other point on the boundary of any lot or tract of land, must, on conviction, be fined not less than fifty, nor more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months.

5627 (3891) (4423) (3740) (193). **Removing or defacing mile-post, guide-board, etc.**—Any person, who willfully destroys or removes any mile-stone, post, board, or guide-board, set upon any road or highway, or willfully defaces, alters, or destroys any letters or figures thereon, must, on conviction, be fined not less than ten, nor more than fifty dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than thirty days.

CHAPTER 199.

VAGRANTS AND TRAMPS. 5628–5632.

5628 (4047) (4218) (3630) (88). **Vagrancy; punishment of.** Any person, who, having no visible means of support, or, being dependent on his labor, lives without employment, or habitually neglects his employment; or who abandons his family and leaves them in danger of becoming a burden to the public; or who, being an able-bodied person, is found begging; or who is a common drunkard, or a common gambler, or goes from place to place for the purpose of gambling; or who is a prostitute, or the keeper of a house of prostitution, and has no honest employment whereby to maintain herself, must, on conviction, for the first offense, be fined not less than ten, nor more than fifty dollars; and, on a second conviction within six months after the first, must be fined not less than fifty, nor more

than one hundred dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than six months. (Form 2.)

Abandonment of wife or family, what constitutes.—Boulo's case, 49 Ala. 22. Personal dislike no excuse.—Ib. A common prostitute, to be vagrant, must have "no honest employment."—Ex parte Birchfield, 52 Ala. 377. A lewd woman, if a minor and supported by parents who have honest occupation, is not a vagrant.—Taylor's case, 59 Ala. 19. Common-law offense of keeping bawdy-house not repealed by this section.—Ex parte Birchfield, 52 Ala. 377. Sufficiency of indictment for abandoning family, etc.—Boulo's case, 49 Ala. 24. Of being common prostitute, etc.—Toney's case, 60 Ala. 97. Proof of character of female inmate of bawdy-house.—Ib. A complaint which follows the statute as to the constituents of the offense is sufficient.—Traylor's case, 100 Ala. 142 (Boulo's case, 49 Ala. 22, criticised). A husband may abandon his wife for a divorceable cause.—Hall's case, 100 Ala. 86; Carney's case, 84 Ala. 7. Misconduct of wife after abandonment is not admissible, unless there was similar conduct before. Ib. The danger of the abandoned family becoming a burden to the public need not be immediate or imminent.—Carney's case, 84 Ala. 7. Abandonment is not excused by mere suspicion of wife's infidelity.—Ib. A witness cannot be compelled to testify whether or not he has had intercourse with the defendant.—Ex parte Boscowitz, 84 Ala. 463. The defendant's wife is not a competent witness against him.—Merriwether's case, 81 Ala. 74. Night-walking; constituents of offense.—Stokes's case, 92 Ala. 73; Williams's case, 98 Ala. 52.

5629 (4048). **Being tramp; definition and punishment.**—Any person, other than one who is blind or visibly unable to do manual labor, or other than one asking charity within the county in which he has had a known place of residence for six months next preceding, who goes from place to place, or house to house, begging or demanding food, raiment, or other thing, is a tramp, and must, on conviction of being such tramp, be fined, for the first offense, not less than fifty, nor more than two hundred dollars, and imprisoned in the county jail, or sentenced to hard labor for the county, for not less than six, nor more than twelve months; and, for each subsequent conviction, must be fined not less than one hundred, nor more than five hundred dollars, and imprisoned in the county jail, or sentenced to hard labor for the county, for not less than one, nor more than two years. (Form 87.)

5630 (4049). **Tramp entering dwelling-house or threatening injury to person or property.**—Any tramp, who enters any dwelling-house or other building, without the consent of the occupant thereof, or who willfully or maliciously injures or threatens to injure any person therein, or who injures or threatens to do an injury to the real or personal property of another, or who demands of, or orders any person to deliver or surrender to him anything of value, must, on conviction, be fined not less than five hundred dollars, and imprisoned in the county jail, or sentenced to hard labor for the county, for not more than two years. (Form 88.)

5631 (4050). **Tramp released on the payment of fine and costs.** Any person, convicted under either of the two preceding sections, who pays in full the fine and costs of conviction, shall forthwith be released from the sentence, and discharged from custody.

5632 (4051). **Prima facie evidence of being a tramp.**—Acts of begging, vagabondage, or vagrancy, by one having no known residence within the county, are prima facie evidence that he is a tramp.

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COMPARATIVE TABLE OF SECTIONS contained in both the Civil and Criminal Codes, showing the number which each section brought from the Code of 1886 bears in this Code, and also the sections of the former Code which are omitted from this Code, the fact of omission being indicated by a corresponding dash.

CODE OF		CODE OF		CODE OF		CODE OF	
1886	1896	1886	1896	1886	1896	1886	1896
1	1	70	3753	to	—	237	1970
to	to	to	to	175	—	238	1989
11	11	79	3762	176	2890	to	to
12	623	80	1876	177	2891	240	1991
to	to	to	to	178	2893	241	3056
14	625	83	1879	179	2895	242	3141
15	3749	84	1974	180	2894	243	3142
16	3750	85	1978	181	—	244	3057
17	1972	86	1976	to	—	to	to
18	3727	87	1977	196	—	253	3066
19	626	88	1975	197	2896	254	3069
to	to	89	1979	198	—	255	3067
22	629	90	1980	to	—	256	3068
23	1396	91	1982	213	—	257	3070
24	2213	92	1981	214	3402	to	to
25	1398	93	1992	215	—	270	3083
to	to	to	to	216	3405	271	3085
27	1400	112	2011	217	—	to	to
28	2214	113	—	218	3407	277	3091
29	969	114	2013	to	to	278	3110
30	970	to	to	220	3409	to	to
31	2215	118	2017	221	—	308	3140
to	to	119	2024	to	—	309	3143
53	2236	120	2018	223	—	310	3145
54	2238	to	to	224	3410	to	to
55	2237	125	2023	225	3411	318	3153
56	2239	126	2027	226	—	319	1556
57	1956	127	2028	227	3412	to	to
58	1958	128	2031	to	to	321	1558
to	to	129	368	229	3414	322	—
63	1963	to	to	230	—	to	—
64	968	140	379	231	3416	337	—
65	1971	141	386	232	1984	338	1573
66	1953	142	390	233	1988	to	to
67	1954	to	to	234	1985	341	1576
68	1965	155	403	to	to	342	1578
69	1966	156	—	236	1987	to	to

CODE OF 1886	CODE OF 1896	CODE OF 1886	CODE OF 1896	CODE OF 1886	CODE OF 1896	CODE OF 1886	CODE OF 1896
357	1593	475	3940	553	4032	644 }	1955
358	1597	to	to	554	—	645 }	
to	to	477	3942	555	4035	646	2636
365	1604	478	—	556	4036	to	to
366	1618	479	3933	557	4037	650	2640
to	to	480	3934	558	4038	651	2643
368	1620	481	3938	559	—	652	2641
369	—	482	3944	560	4040	653	2644
370	—	to	to	to	to	654	2646
371	1625	486	3948	572	4052	655	964
372	1626	487	3950	573	4056	656	2647
373	1629	488	3951	574	4054	to	to
to	to	489	3953	575	4055	658	2649
385	1641	490	3954	576	4057	659	2652
386	1643	491	—	577	4059	660	2653
to	to	492	3955	to	to	661	2650
395	1652	493	3956	582	4064	662	2651
396	—	494	3964	583	4058	663	3040
to	—	495	3965	584	4065	664	3041
406	—	to	to	to	to	665	3044
407	1671	505	3975	591	4072	to	to
408	—	506	—	592	4074	672	3051
to	—	507	—	to	to	673	3825
416	—	508	3943	594	4076	674	—
417	1697	509	3976	595	4108	675	3826
418	—	to	to	596	4077	to	to
to	—	511	3978	to	to	677	3828
434	—	512	—	598	4079	678	3834
435	1653	513	3980	599	4081	679	3835
to	to	to	to	600	4083	680	—
443	1661	518	3985	to	to	to	—
444	—	519	—	608	4091	683	—
445	1662	520	3986	609	—	683a	3840
to	to	521	—	610	4095	684	3841
449	1666	522	3987	to	to	685	3845
450	3906	523	3988	614	4100	to	to
451	3907	524	3992		4102	694	3854
452	3910	to	to		4103	695	3856
to	to	528	3996	615	—	to	to
454	3912	529	—	616	4104	704	3865
455	—	to	—	617	4105	705	—
456	3918	531	—	618	4109	706	3866
to	to	532	4002	619	4110	to	to
462	3924	to	to	620	4113	708	3868
463	—	537	4007	to	to	709	—
to	—	538	4009	632	4125	710	3869
466	—	to	to	633	4132	711	3871
467	3928	545	4016	634	4126	712	3872
468	—	546	4018	to	to	713	630
469	—	to	to	636	4128	714	—
470	3932	548	4020	637	4131	to	—
471	3935	549	—	638	4129	717	—
472	—	550	4027	639	2695	718	636
473	3936	551	4028	to	to	to	to
474	3937	552	—	642	2698	731	649
				643	2012		

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732	653
to	to
739	660
740	—
741	661
to	to
747	667
748	897
749	898
750	912
to	to
756	918
757	920
to	to
764	927
765	931
to	to
777	943
778	3354
779	3356
780	3355
781	3357
to	to
791	3367
792	3369
to	to
795	3372
796	3375
to	to
805	3384
806	3735
to	to
810	3739
811	3741
to	to
818	3748
819	951
to	to
831	963
832	965
to	to
834	967
835	2658
to	to
842	2665
843	971
to	to
850	978
851	980
852	—
853	579
to	to
879	605
880	610
881	606

CODE OF 1886	CODE OF 1896
to	to
884	609
885	611
886	1397
887	1401
to	to
891	1405
892	1407
to	to
909	1424
910	1426
911	1428
912	—
913	1427
914	—
915	1429
916	—
917	1431
to	to
922	1436
923	1073
924	1075
to	to
928	1079
929	1083
930	1084
931	1081
932	1082
933	3889
to	to
942	3898
943	3539
to	to
960	3556
961	—
962	3558
963	3557
964	—
965	3559
to	to
979	3573
980	3659
981	3634
982	3575
to	to
984	3577
985	3579
to	to
991	3585
992	3587
to	to
1000	3595
1001	3598
to	to
1012	3609

CODE OF 1886	CODE OF 1896
1013	—
to	—
1015	—
1016	3617
to	to
1022	3623
1023	3625
1024	3624
1025	3626
to	to
1032	3633
1033	3635
to	to
1055	3657
1056	—
1057	3660
1058	3667
to	to
1073	3682
1074	3686
to	to
1091	3703
1092	—
1093	—
1094	3704
to	to
1099	3709
1100	3718
1101	—
1102	3021
1103	3023
to	to
1119	3039
1120	3481
to	to
1143	3504
1144	3440
to	to
1148	3444
1149	—
1150	—
1151	3445
to	to
1153	3447
1154	3451
1155	3456
to	to
1173	3474
1174	4218
to	to
1185	4229
1186	1389
to	to
1192	1395
1193	866

CODE OF 1886	CODE OF 1896
to	to
1195	868
1196	1096
to	to
1198	1098
1199	—
to	—
1216	—
1217	4230
to	to
1228	4240
1229	—
to	—
1249	—
1250	2563
to	to
1254	2567
1255	—
to	—
1259	—
1260	2392
to	to
1262	2394
1263	2398
to	to
1273	2408
1274	—
to	—
1277	—
1278	2423
1279	2425
1280	2426
1281	2428
to	to
1295	2442
1296	—
to	—
1300	—
1301	3260
to	to
1304	3263
1305	—
1306	3264
1307	3265
1308	3267
1309	—
1310	1444
to	to
1318	1452 3266 3259
1319	3520
to	to
1323	3524
1324	2538

CODE OF 1886	CODE OF 1896	CODE OF 1886	CODE OF 1896	CODE OF 1886	CODE OF 1896	CODE OF 1886	CODE OF 1896
to	to	to	to	1810	1005	2041	87
1329	2543	1556	1125	to	to	to	to
1330	1761	1557	1139	1821	1016	2044	90
to	to	to	to	1822	1018	2045	92
1360	1791	1572	1154	to	to	to	to
1361	2834	1573	1156	1867	1063	2080	127
to	to	to	to	1868	1065	2081	130
1363	2836	1585	1168	to	to	to	to
1364	2110	1586	1170	1870	1067	2097	147
1365	2113	1587	1172	1871	1069	2098	150
to	to	to	to	to	to	to	to
1375	2123	1612	1197	1874	1072	2109	161
1376	2897	1613	1205	1875	2699	2110	163
1377	2898	to	to	to	to	to	to
1378	420	1673	1265	1877	2701	2116	169
1379	421	1674	1668	1878	1003	2117	171
1380	2971	1675	1272	1879	3505	to	to
1381	2622	to	to	to	to	2123	177
to	to	1680	1277	1882	3508	2124	179
1384	2625	1681	1280	1883	3510	to	to
1385	—	1682	1285	to	to	2132	187
1386	—	1683	1291	1888	3515	2133	201
1387	2443	to	to	1889	3517	to	to
to	to	1704	1312	to	to	2222	290
1463	2519	1705	3207	1891	3519	2223	291
1464	5330	to	to	1892	1504	2224	292
1465	3232	1729	3231	1893	1505	2225	293
to	to	1730	2150	1894	1509	to	to
1468	3235	to	to	to	to	2269	337
1469	3237	1733	2153	1913	1528	2270	339
to	to	1734	2155	1914	419	to	to
1473	3241	to	to	1915	1453	2294	363
1474	496	1749	2170	to	to	2295	188
to	to	1750	2626	1935	1473	to	to
1485	507	to	to	1936	1752	2297	190
1486	2937	1754	2630	to	to	2298	192
to	to	1755	2632	1944	1760	to	to
1495	2946	1756	869	1945	4241	2306	200
1496	—	to	to	to	to	2307	2837
1497	2947	1761	874	1964	4260	to	to
to	to	1762	876	1965	4262	2321	2851
1512	2962	to	to	to	to	2322	1485
1513	2964	1782	896	1987	4284	to	to
to	to	1783	946	1988	4286	2326	1489
1519	2970	to	to	to	to	2327	1491
1520	2973	1787	950	2000	4298	to	to
1521	1085	1788	981	2001	4300	2334	1498
to	to	1789	982	2002	4299	2335	1508
1528	1092	1790	984	2003	45	2336	1469
1529	1094	to	to	to	to	to	to
1530	1095	1804	998	2028	70	2340	1503
1531	1099	1805	—	2029	72	2341	2520
to	to	1806	999	to	to	2342	2521
1540	1108	to	to	2039	82	2343	2523
1541	1110	1809	1002	2040	84	to	to

CODE OF 1886	CODE OF 1896
2349	2529
2350	—
2351	2530
2352	2533
2353	2534
2354	1506
2355	1507
2356	2535
2357	829
to	to
2363	835
2364	364
to	to
2367	367
2368	2536
2369	2537
2370	2247
to	to
2377	2254
2378	2272
2379	2274
to	to
2382	2277
2383	2273
2384	2278
2385	2279
2386	2284
2387	2281
to	to
2389	2283
2390	2255
to	to
2406	2271
2407	2273
2408	2278
2409	2279
2410	2271
2411	2285
to	to
2413	2287
2414	2289
to	to
2429	2304
2430	2308
to	to
2433	2312
2434	2317
2435	2318
2436	2325
2437	2330
2438	2334
2439	2321 2325
2440	—
2441	2305

CODE OF 1886	CODE OF 1896
to	to
2443	2307
2444	3313
2445	2314
to	to
2447	2316
2448	2319
2449	2320
2450	—
2451	2325
2452	2330
2453	2338
to	to
2492	2377
2493	2379
2494	2378
2495	2380
2496	2381
2497	2387
to	to
2501	2391
2502	836
2503	837
2504	839
2505	838
2506	840
2507	2033
to	to
2544	2070
2545	2072
2546	2073
2547	2075
2548	2078
to	to
2561	2091
2562	2097
2563	2098
2564	2076
2565	2102
to	to
2572	2109
2573	12
to	to
2576	15
2577	—
2578	16
to	to
2589	27
2590	1749
2591	1751
2592	1750
2593	338
2594	28
to	to
2599	33

CODE OF 1886	CODE OF 1896
2600	35
to	to
2609	44
2610	2633
2611	2634
2612	2793
to	to
2618	2799
2619	2801
2620	2803
to	to
2633	2816
2634	2819
to	to
2639	2824
2640	4205
to	to
2650	4215
2651	3268
to	to
2657	3274
2658	3279
to	to
2677	3297
2678	3728
to	to
2682	3732
2683	3734
2684	3733
2685	3298
to	to
2693	3306
2694	983
2695	1529
to	to
2706	1540
2707	1547
to	to
2714	1554
2715	2722
2716	1555
2717	1474
to	to
2720	1477
2721	1479
2722	1481
2723	1483
2724	1437
to	to
2730	1443
2731	3307
to	to
2749	3325
2750	2654
to	to

CODE OF 1886	CODE OF 1896
2753	2657
2754	3326
to	to
2757	3329
2758	612
2759	614
to	to
2761	616
2762	621
2763	1792
to	to
2766	1795
2767	1798
to	to
2790	1821
2791	1823
to	to
2806	1838
2807	1841
to	to
2818	1852 1854
2819	1855
to	to
2822	1858
2823	1861
to	to
2829	1867
2830	1875
2831	—
2832	3330
to	to
2836	3334
2837	1325
2838	1326
2839	1328
2840	1329
2841	1336
to	to
2844	1389
2845	1330
2846	1333
to	to
2848	1335
2849	1340
2850	1341
2851	1332
2852	1331
2853	1342
to	to
2863	1352
2864	919
2865	3335
to	to
2881	3351

CODE OF 1886	CODE OF 1896
2882	1880
to	to
2915	1913
2916	1915
2917	1914
2918	1916
to	to
2921	1919
2922	1924
2923	1925, 1930
2924	1931
2925	1926
to	to
2928	1929
2929	524
to	to
2946	541, 2175
2947	542
2948	543, 2178
2949	2179
to	to
2951	2181
2952	2177
2953	544
to	to
2967	558
2968	2172, 2173, 2174
2969	559
2970	560
2971	2172
2972	2182
2973	2173
2974	2187
2975	2190
to	to
2992	2207
2993	2185
2994	2171
2995	561
to	to
2999	565
3000	567
to	to
3003	570
3004	4141
3005	4142
3006	4146
3007	4143
3008	4144
3009	4147
to	to
3011	4149
3012	4141
3013	4144
3014	4141
3015	4150
3016	4151
3017	4145
3018	2723
to	to
3047	2752
3048	2733
3049	2753
to	to
3055	2759
3056	2703
to	to
3074	2721
3075	2760
to	to
3094	2779
3095	3763
to	to
3143	3811
3144	3875
to	to
3157	3188
3158	2825
to	to
3166	2833
3167	3417
to	to
3171	3421
3172	3426
to	to
3183	3437
3184	1727
to	to
3186	1729
3187	1732
3188	1730
3189	1731
3190	1733
to	to
3200	1743
3201	—
3202	1744
to	to
3206	1748
3207	1712
to	to
3209	1714
3210	—
3211	1717, 1718
3212	1719
3213	1715
3214	1716
3215	1720
3216	1721
3217	1725
3218	1722
to	to
3220	1724, 1726
3221	508
to	to
3231	518
3232	521
to	to
3234	523
3235	520
3236	519
3237	3161
to	to
3240	3164
3241	3166
to	to
3281	3206
3282	3525
to	to
3295	3538
3296	4137
3297	4139
3298	4217
3299	4140
3300	2666
to	to
3306	2672
3307	2681
to	to
3312	2686
3313	2673
3314	2677
3315	2674
3316	2676
3317	2675
3318	2678
to	to
3320	2680
3321	3812
to	to
3333	3824
3334	571
to	to
3339	576
3340	2209
3341	577
3242	2210
3343	578, 2211
3344	2212
3345	1932
to	to
3358	1945
3359	1947
to	to
3364	1952
3365	4141
to	to
3368	4144
3369	—
3370	2687
to	to
3373	2690
3374	2693
3375	2691
3376	2692
3377	2694
3378	2124
to	to
3397	2143
3398	481, 2144
3399	482
3400	483
3401	2145
3402	484
3403	485
3404	487
to	to
3410	493
3411	2146
3412	494
3413	495
3414	669
to	to
3424	679
3425	681
to	to
3430	686
3431	688
to	to
3458	715
3459	718
3460	720
to	to
3474	734
3475	—
3476	739
3477	741
to	to
3524	788
3525	790

CODE OF		CODE OF		CODE OF		CODE OF	
1886	1896	1886	1896	1886	1896	1886	1896
to	to	3725	4854	3811	4729	to	to
3532	797	to	to	to	to	3920	4416
3533	789	3734	4863	3831	4749	3921	5098
3534	799	3735	5095	3832	4751	to	to
3535	800	3736	5444	3833	4752	3927	5104
3536	805	to	to	3834	4756	3928	5113
to	to	3739	5447	to	to	3929	5116
3539	808	3740	5449	3836	4758	3930	5114
3540	814	3741	5450	3837	4760	3931	5105
to	to	3742	5479	to	to	3932	5117
3548	822	3743	4101	3850	4773	3933	5106
3549	4152	3744	4302	3851	4719	to	to
to	to	to	to	to	to	3935	5108
3554	4157	3746	4304	3860	4728	3936	5115
3555	4174	3747	4343	3861	5055	3937	—
to	to	to	to	to	to	3938	5154
3576	4195	3749	4345	3868	5062	3939	5147
3577	4197	3750	5088	3869	5090	3940	5126
to	to	3751	4346	to	to	to	to
3584	4204	3752	4347	3873	5094	3946	5132
3585	824	3753	4546	3874	5606	3947	5145
to	to	3754	4547	3875	5612	3948	5141
3587	826	3755	4557	3876	5613	3949	5133
3588	828	3756	5504	3877	5610	3950	5146
3589	827	to	to	3878	5614	3951	5155
3590	844	3763	5511	3879	5615	3952	5156
to	to	3764	4311	3880	5611	3953	5134
3610	864	3765	5473	3881	5616	3954	5135
3611	426	3766	5474	to	to	3955	5157
to	to	3767	4657	3886	5621	3956	5158
3617	432	3768	4658	3887	5623	3957	5142
3618	435	3769	4307	to	to	to	to
to	to	3770	5248	3891	5627	3959	5144
3664	480	3771	5063	3892	5467	3960	5123
3665	1353	to	to	3893	—	to	to
to	to	3774	5066	3894	4134	3962	5125
3680	1368	3775	4420	3895	5468	3963	5136
3681	1371	to	to	to	to	to	to
to	to	3779	4424	3897	5470	3965	5138
3698	1388	3780	4336	3898	5150	3966	5140
3699	4650	to	to	3899	4753	3967	5152
to	to	3785	4341	3900	5148	3968	5153
3701	4652	3786	4417	3901	5151	3969	5047
3702	4891	to	to	3902	5139	3970	5048
3703	4967	3788	4419	3903	5471	3971	5110
3704	4308	3789	5049	3904	5149	to	to
3705	5540	to	to	3905	5150	3973	5112
3706	5541	3794	5054	3906	5198	3974	5463
3707	5067	3795	4659	3907	5200	to	to
to	to	to	to	3908	5199	3977	5466
3715	5075	3802	4666	3909	5201	3978	5119
3716	4968	3803	4668	3910	—	to	to
to	to	3804	4667	3911	5202	3980	5121
3723	4975	to	to	3912	5203	3981	4548
3724	5605	3810	4673	3913	4409	3982	4549

CODE OF	
1886	1896
3983	5122
3984	4550
3985	5089
3986	4551
3987	4553
3988	4556
3989	4552
3990	4699
to	to
4004	4713
4005	4309
4006	4427
to	to
4008	4429
4009	4774
4010	4775
4011	5483
4012	4310
4013	4889
4014	4890
4015	5503
4016	4406
4017	4407
4018	5096
4019	5097
4020	4642
4021	4643
4022	4305
4023	4644
to	to
4028	4649
4029	5599
4030	5600
4031	4306
4032	4653
to	to
4035	4656
4036	5076
to	to
4039	5079
4040	5081
to	to
4044	5085
4045	5542
4046	5543
4047	5628
to	to
4051	5632
4052	4792
to	to
4069	4809
4070	5321
to	to
4074	5325
4075	5327

CODE OF	
1886	1896
4076	5329
4077	5332
to	to
4079	5334
4080	5337
to	to
4092	5349
4093	5351
4094	5353
to	to
4097	5356
4098	5360
to	to
4102	5364
4103	5366
to	to
4112	5375
4113	5379
to	to
4136	5402
4137	5406
to	to
4139	5408
4140	2631
4141	5544
to	to
4144	5547
4145	5549
to	to
4152	5556
4153	5560
to	to
4158	5565
4159	5596
4160	5597
4161	5571
4162	5582
to	to
4175	5595
4176	5598
4177	5602
4178	4685
to	to
4191	4698
4192	5414
4193	4589
4194	4590
4195	4592
4196	4591
4197	4593
to	to
4232	4628
4233	4630
4234	4632
to	to

CODE OF	
1886	1896
4243	4641
4244	5513
to	to
4247	5516
4248 } 4249 }	5517
4250	5522
to	to
4254	5526
4255	5204
to	to
4298	5247
4299	—
4300	—
4301	4986
to	to
4303	4988
4304	—
to	—
4310	—
4311	4994
4312	4996
4313	—
4314	4997
4315	—
4316	4998
4317	5000
4318	5001
4319	—
4320	—
4321	5006
to	to
4343	5028
4344	5030
to	to
4359	5045
4360	—
to	—
4363	—
4364	4892
to	to
4394	4922
4395	5251
to	to
4405	5261
4406	4348
to	to
4409	4351
4410	4353
4411	4351
4412	4354
to	to
4429	4371
4430	4373
to	to

CODE OF	
1886	1896
4437	4380
4438	5262
to	to
4491	5315
4492	5412
4493	5413
4494	5415
to	to
4502	5423
4503	5425
to	to
4507	5429
4508	4312
4509	4333
4510	4324
4511	4318
4512	4319
4513	4321
4514	4323
4515	4315
4516	4327
to	to
4521	4332
4522	4334
4523	4335
4524	5451
to	to
4533	5460
4534	5424
4535	4946
to	to
4555	4966
4556	4431
to	to
4561	4436
4562	4440
to	to
4571	4449
4572	4438
4573	4439
4574	4450
4575	—
4576	—
4577	4451
4578	—
4579	4452
4580	4453
4581	4455
to	to
4584	4458
4585	4520
to	to
4587	4522
4588	4531
4589	4523

CODE OF		CODE OF		CODE OF		CODE OF	
1886	1896	1886	1896	1886	1896	1886	1896
to	to	4624	4494	4654	4489	4801	4924
4593	4527	4625	4471	to	to	to	to
4594	—	4626	—	4658	4493	4814	4937
4595	4529	4627	—	4659	4544	4815	4943
4596	4530	4628	4503	4660	4509	4816	4942
4597	4534	to	to	4661	4480	4817	4944
to	to	4632	4507	4662	4510	4818	4864
4601	4538	4633	4472	4663	4481	to	to
4602	—	4634	4473	4664	4508	4832	4878
4603	4539	4635	4500	4665	5430	4833	4880
to	to	4636	4519	to	to	to	to
4606	4542	4637	4488	4678	5443	4841	4888
4607	—	4638	4502	4679	5160	4842	4381
4608	—	4639	4501	to	to	to	to
4609	4461	4640	—	4716	5197	4866	4405
4610	4462	4641	—	4717	5572	4867	4560
4611	—	4642	4499	to	to	to	to
4612	4464	4643	4495	4726	5581	4872	4565
to	to	4644	4475	4727	5484	4873	4570
4614	4466	4645		to	to	to	to
4615	4483	4646	4477	4745	5502	4891	4588
4616	4485	4647	4478	4746	4777	4892	4558
4617	4484	4648	4476	to	to	4893	4559
4618	4486	4649	—	4760	4791	4894	4714
4619	4487	4650	4518	4761	4812	to	to
4620	4467	4651	4497	4762	4815	4898	4718
to	to	4652	4496	to	to	4899	4923
4623	4470	4653	4479	4800	4853		

SECTIONS NEW TO THIS CODE.

71	418	687	899	1169	1327	1605	1859	2071	2208
83	422	716	to	1171	1369	to	1860	2074	2240
85	to	717	911	1198	1370	1617	1868	2077	to
86	425	719	928	to	1406	1621	to	2092	2246
91	433	735	to	1204	1425	to	1874	to	2280
128	434	to	930	1266	1430	1624	1920	2096	2288
129	486	738	944	1267	1478	1627	to	2099	2322
148	566	740	945	1269	1480	1628	1923	to	to
149	613	798	979	to	1482	1642	1946	2101	2324
162	617	801	1004	1271	1484	1667	1957	2111	2326
170	to	to	1017	1278	1490	to	1964	2112	to
178	620	804	1064	1279	1541	1670	1967	2147	2329
191	622	809	1068	1281	to	1672	to	to	2331
380	631	to	1074	to	1546	to	1969	2149	to
to	to	813	1080	1284	1559	1711	1973	2154	2333
385	635	823	1093	1286	to	1796	1983	2176	2335
387	650	841	1109	to	1572	1797	2025	2183	to
to	to	to	1126	1290	1577	1822	2026	2184	2337
389	652	843	to	1313	1594	1839	2029	2186	2382
404	668	865	1138	to	to	1840	2030	2188	to
to	680	875	1155	1324	1596	1853	2032	2189	2386

2395	2899	3374	3658	3909	4034	4325	4674	5087	5462
to	to	3385	3661	3913	4039	4326	to	5109	5475
2397	2936	to	to	to	4053	4342	4684	5118	to
2409	2963	3401	3666	3917	4073	4352	4750	5159	5478
to	2972	3403	3683	3925	4080	4372	4754	5248	5480
2422	2974	3404	to	to	4082	4408	4755	to	to
2424	to	3406	3685	3927	4092	4425	4759	250	5482
2427	2991	3415	3710	3929	to	4426	4776	5316	5512
2522	3022	3422	to	to	4094	4430	4810	to	5518
2531	3042	to	3717	3931	4101	4437	4811	5320	to
2532	3043	3425	3719	3939	4106	4454	4813	5326	5521
2544	3052	3438	to	3949	4107	4459	4814	5328	5527
to	to	3439	3726	3952	4111	4460	4879	5331	to
2562	3055	3448	3740	3957	4112	4463	4938	5335	5539
2568	3084	to	3751	to	4130	4474	to	5336	5548
to	3092	3450	3752	3963	4133	4482	4941	5350	5557
2621	to	3452	3829	3979	4135	4498	4945	5352	to
2635	3109	to	to	3989	4136	4511	4976	5357	5559
2642	3144	3455	3833	to	4138	to	to	to	5566
2645	3154	3475	3836	3991	4158	4517	4985	5359	to
2702	to	to	to	3997	to	4528	4989	5365	5570
2780	3160	3480	3839	to	4173	4532	to	5376	5601
to	3165	3509	3842	4001	4196	4533	4993	to	5603
2792	3236	3516	to	4008	4216	4543	4995	5378	5604
2800	3242	3574	3844	4017	4261	4545	4999	5403	5607
2802	to	3578	3855	4021	4285	4554	5002	to	to
2817	3258	3586	3873	to	4313	4555	to	5405	5609
2818	3275	3596	3874	4026	4314	4566	5005	5409	5622
2852	to	3597	3899	4029	4316	to	5029	to	—
to	3278	3610	to	to	4317	4569	5046	5411	—
2889	3368	to	3905	4031	4320	4629	5080	5448	—
2892	3373	3616	3908	4033	4322	4631	5086	5461	—